



## PROPOSED ASX LISTING RULE CHANGES: MAJOR UPDATES TO ASX LISTING RULES AND GUIDANCE NOTES

The Australian Securities Exchange (**ASX**) has issued a consultation paper setting out proposed major amendments to its listing rules and guidance notes in order to “simplify, clarify, and enhance the integrity and efficiency of, the ASX listing rules”. The consultation paper was released on 28 November 2018, and can be accessed [here](#).

As the paper’s name suggests, many of the proposed amendments seek to simplify and clarify the current listing rules and processes of the ASX (and to this extent, ASX has proposed a number of drafting changes which are not substantive changes in nature). However, there are a number of amendments that will impose more rigorous obligations on listed entities, and will need to be carefully considered so that listed entities can amend their current practices in anticipation of a modified ASX landscape.

ASX is currently seeking feedback on the consultation paper and it is expected that the final listing rule amendments and amended guidance notes will be finalised and released in May 2019, with the amendments effective as of 1 July 2019.

In conjunction with the proposed amendments, ASX is proposing to transition to online ‘smart’ forms. This means that a number of commonly used forms, including appendices 3B, 3Y, 3Z and 4C, will be amended and made available to listed entities via ASX Online. ASX may also further amend these forms from time to time. As a result, entities should not rely on any prior precedent forms they have on file and should instead log into ASX Online to ensure they are using the most up-to-date version of the forms.

ASX is also proposing to make a number of changes to the prescribed timetables for certain corporate actions. As a result, entities should be cautious in relying on the timing of previous corporate actions. Timetables that are being amended include equal access buy backs and security purchase plans.

A number of amendments will also expand ASX’s powers to request information from entities, exercise any of its powers or discretions in relation to an entity, impose requirements or conditions on entities, and even censure entities that breach the listing rules, and announce the details of the breach to the market. Further details on these new powers are provided in the table below.

In addition to these general changes, we have set out below a summary of the more substantive changes:

Improving market disclosures and other market integrity measures	
Quarterly Activities Report	
<b>Current rule</b>	An entity that listed under listing rule 1.3.2(b) (under the assets test and where half or more of the entity's total tangible assets are in cash or in a form readily convertible to cash) must lodge an Appendix 4C every quarter.
<b>Proposed amendments</b>	<p>In addition to the Appendix 4C, an entity must also lodge a quarterly activities report. This report must contain prescribed information, including:</p> <ul style="list-style-type: none"> <li>• the entity's business activities and a summary of the expenditure incurred on those activities;</li> <li>• a comparison of its actual expenditure since the date of its listing against the expenditure estimated in a 'use of funds' statement or expenditure program for the relevant period (including an explanation of any material variances);</li> <li>• if any category of expenditure in the Appendix 4C is materially different from the estimated cash outflows provided in the Appendix 4C for the preceding quarter, an explanation as to why; and</li> <li>• a description of and explanation for any payments to a related party of the entity.</li> </ul>
Reporting for Investment Entities	
<b>Current rule</b>	<p>Listing rule 4.10.20 provides that an investment entity must disclose in its annual report a list of all investments held by it and its child entities, the total number of transactions in securities during the reporting period, together with the brokerage paid or accrued, and the total management fees paid or accrued during that period.</p> <p>Listing rule 4.12 provides that an investment entity must tell ASX the net tangible asset backing of its quoted securities at the end of every month within 14 days after the end of that month.</p>
<b>Proposed amendments</b>	<p>In addition to the current requirements of listing rule 4.10.20, there will be additional disclosure requirements for investment entities. Most notably, an investment entity must now disclose the respective value of each specific investment.</p> <p>Listing rule 4.12 will now require an entity to disclose its monthly net tangible asset backing immediately when it becomes aware of the information, even if this is earlier than 14 days after the end of that month.</p> <p>Further, if an investing entity fails to disclose information regarding its net tangible asset backing every month, it will be automatically suspended from trading.</p> <p>The definition of net tangible asset backing is also being amended.</p>
Disclosure of Voting Results	
<b>Current rule</b>	Listing rule 3.13.2 states that an entity must disclose the voting results in respect of each resolution to be put to a meeting of security holders. However, there is no prescribed standard format of this disclosure.
<b>Proposed amendments</b>	<p>Listing rule 3.13.2 will now prescribe certain information be included in the relevant disclosure, including:</p> <ul style="list-style-type: none"> <li>• both the number and a short description of the resolution;</li> <li>• whether the resolution was passed or not;</li> <li>• whether the resolution was decided on a show of hands or a poll;</li> <li>• if the resolution was decided on a poll, the number of securities that were voted for and against the resolution, and the number of securities that formally abstained;</li> <li>• regardless of how the resolution was decided, the aggregate number of securities for which valid proxies were received, showing separately the aggregate number of securities that were directed to vote for, against and abstain in respect of the resolution, as well as the number of securities that were left to the chair's discretion and the number of securities that were left to a non-chair proxy's discretion; and</li> <li>• if the resolution related to the adoption of the entity's remuneration report, a statement as to whether the outcome constitutes a 'first strike' or 'second strike'.</li> </ul>

Disclosures regarding Underwriters	
Current rule	There are inconsistent disclosure requirements throughout the listing rules where an entity must disclose information in respect of an underwriter.
Proposed amendments	Further information must be provided in relation to underwriters in respect of multiple listing rules (including listing rules 3.11.3, 7.2 and 10.12, as well as under an Appendix 3B). The information required includes: <ul style="list-style-type: none"> <li>the name of the underwriter;</li> <li>the extent of the underwriting;</li> <li>the fee or commission payable to the underwriter; and</li> <li>a summary of the material circumstances where the underwriter has the right to avoid or change their obligations.</li> </ul>
Good Fame and Character	
Current rule	A listing entity must satisfy ASX that each director or proposed director of the entity at the date of listing is of good fame and character.
Proposed amendments	In addition to each director or proposed director, the entity must also satisfy ASX that its CEO or proposed CEO at the date of listing is of good fame and character.
Communication with ASX	
Current rule	An entity must appoint a person to be responsible for communication with ASX in relation to listing rule matters.
Proposed amendments	If the person is appointed on or after 1 July 2019 (whether or not the entity is listed already or applying for a listing), the appointed person must have completed an approved listing rule compliance course and attained a satisfactory pass mark in the examination for that course.  ASX proposes to make available an approved course and examination for free on their website for the purposes of this requirement.
Assets Test – Working Capital	
Current rule	An entity applying to list under the assets test must have working capital of at least \$1.5 million, or alternatively it would be at least \$1.5 million if the entity's budgeted revenue for the first full financial year that ends after listing was included in its working capital, less budgeted administration costs.
Proposed amendments	The budgeted revenue for the first full financial year less budgeted administration costs can no longer be considered in calculating the working capital of an entity. The entity must have \$1.5 million in working capital at the time of its listing to list under the assets test.
Non-Cash Issues under Listing Rule 7.1A	
Current rule	An entity that has access to the additional 10% placement capacity under listing rule 7.1A is entitled to use this capacity in respect of an issue of securities for both cash and non-cash consideration.
Proposed amendments	An entity can no longer use its additional 10% placement capacity under listing rule 7.1A to issue securities for non-cash consideration.
Minimum Issue Price for Listing Rule 7.1	
Current rule	Listing rule 7.3.3 states that securities being issued with shareholder approval under listing rule 7.1 cannot have their minimum issue price below 80% of the volume weighted average market price (VWAP) for those securities calculated over the last 5 trading days.
Proposed amendments	The minimum price constraint (80% of the 5-day VWAP) will be removed.
Disclosure Requirements for Listing Rule 10.1	
Current rule	The notice of meeting for an acquisition or disposal under listing rule 10.1 does not have any prescribed content requirements.
Proposed amendments	A new listing rule 10.5 will be introduced which will provide the minimum content required for a notice of meeting for an acquisition or disposal under listing rule 10.1.
Issuing Securities to Directors/Associates under an Employee Incentive Scheme	
Current rule	An entity seeking security holder approval to issue securities under an employee incentive scheme to a director of the entity or a director's associate must include certain disclosures in the notice of meeting as prescribed by listing rule 10.15 or 10.15A.
Proposed amendments	Listing rules 10.15 and 10.15A are now merged into one rule (listing rule 10.15) which is substantially based on listing rule 10.15A. Further, there is a new requirement to disclose the relevant director's current total remuneration package.

Voting Exclusion Statements	
Current rule	Listing rule 14.11 sets out various voting exclusion statements that must be included in the notice of meeting in respect of multiple listing rules.
Proposed amendments	<p>Amendments are proposed for voting exclusion statement requirements in respect of multiple listing rules. In particular, the voting exclusion statement in respect of listing rules 7.1A (additional placement capacity), 10.1 and 10.11 (related party transactions), 11.1 (change to the nature or scale of activities), 11.2 (change involving main undertaking) and 11.4 (disposal of major asset) will be amended or introduced.</p> <p>The voting exclusion statements for the above listing rules also now make mention to any other person who will obtain a 'material benefit' as a result of the transaction, disposal, issue or proposed issue (except a benefit solely by reason of being a holder of ordinary securities in the entity).</p> <p>Guidance Note 12 and 24 will be amended, and a new Guidance Note 21 will be issued, to state that ASX considers a 'material benefit' to be one that is likely to incline the recipient of the benefit to vote differently to other ordinary security holders.</p>
Efficiency Measures	
Compulsory Escrow	
Current rule	An entity seeking to list under the assets test, that does not have an acceptable track record of profitability or revenue, or does not have a substantial proportion of its assets as tangible assets or assets with a readily ascertainable value, must enter into an escrow agreement with the holders and controllers of restricted securities.
Proposed amendments	<p>A two-tier escrow regime for entities seeking to list is being proposed. In this regime:</p> <ul style="list-style-type: none"> <li>significant holders of restricted securities and their controllers, such as related parties, promoters, substantial holders, service providers, and their associates, will be required to execute a formal escrow agreement in the form of Appendix 9A; and</li> <li>for less significant holdings, ASX will permit entities to rely on a provision in their constitution imposing appropriate escrow restrictions on the holder of restricted securities. The entity can then simply give them notice in the form of a new Appendix 9C advising them of those restrictions.</li> </ul>
Track Record of Profitability or Revenue	
Current rule	The listing rules and Guidance Note 11 do not explain what it means to have a "track record of profitability or revenue acceptable to ASX".
Proposed amendments	<p>Guidance Note 11 is being amended to provide guidance on what ASX considers to be an acceptable track record of profitability or revenue.</p> <p>In relation to profitability, the entity must:</p> <ul style="list-style-type: none"> <li>be a going concern or the successor of a going concern that has had continuing operations for at least 3 full financial years;</li> <li>have conducted the same main business activity during the last 3 full financial years and through to the date it is admitted;</li> <li>have aggregated profit for the last 3 full financial years of at least \$1 million; and</li> <li>have consolidated profit for the 12 months to date no more than 2 months before the date it applied for admission of at least \$500,000.</li> </ul> <p>In relation to revenue, ASX will consider this on a case-by-case basis, but generally the entity must:</p> <ul style="list-style-type: none"> <li>be a going concern or the successor of a going concern that has had continuing operations for at least 3 full financial years;</li> <li>have conducted the same main business activity during the last 3 full financial years and through to the date it is admitted;</li> <li>have aggregated revenue from continuing operations for the last 3 full financial years of at least \$30 million;</li> <li>have consolidated revenue from continuing operations for the 12 months to a date no more than 2 months before the date it applied for admission of at least \$20 million;</li> <li>be raising at least \$20 million in its IPO; and</li> <li>have a market capitalisation at the date of listing of at least \$100 million.</li> </ul> <p>However, even if the entity meets the above thresholds in relation to profits or revenue, ASX retains a discretion to require escrow if ASX considers it appropriate in the circumstances.</p>

<b>Eliminating the Need for Standard Waivers</b>	
<b>Current rule</b>	<p>There are a number of listing rules in which standard waivers are routinely applied for. For example:</p> <ul style="list-style-type: none"> <li>• security purchase plans under listing rule 7.2, where the security purchase plan would otherwise qualify for the relief in ASIC Class Order 09/425 but for the fact that the entity's securities have been suspended for longer than permitted; and</li> <li>• agreements to issue securities under listing rule 7.2, where the agreement was entered into before the entity was listed, and the entity disclosed the material terms of the agreement in the listing prospectus or PDS.</li> </ul>
<b>Proposed amendments</b>	<p>ASX has noted that it routinely grants waivers in respect of the above examples, and is amending its listing rules so that these standard waivers are built into the listing rule and will no longer need to be applied for by the entity.</p>
<b>Monitoring and enforcing compliance with the listing rules</b>	
<b>Giving ASX Information</b>	
<b>Current rule</b>	<p>Listing rule 18.7 requires an entity to give ASX any information, document or explanation that ASX asks for to enable it to be satisfied that the entity is, and has been, complying with the listing rules.</p>
<b>Proposed amendments</b>	<p>ASX is proposing to expand its powers in requesting information from entities. In particular, ASX is proposing to expand listing rule 18.7 to empower it to require an entity to disclose any information, document or explanation that ASX reasonably requires to perform its obligations as a licensed market operator.</p>
<b>Examples of Requirements ASX may Impose</b>	
<b>Current rule</b>	<p>Listing rule 18.8 provides that an entity must comply with any requirement ASX imposes on it in order to ensure compliance with the listing rules.</p>
<b>Proposed amendments</b>	<p>Listing rule 18.8 will be amended to state that ASX may require an entity to do or refrain from doing any act or thing that, in ASX's opinion, is necessary to ensure or facilitate compliance with the listing rules. Further, the rule now gives examples of conditions that ASX may impose, without limiting itself to these conditions. Some examples are:</p> <ul style="list-style-type: none"> <li>• to give specified information to ASX for release to the market;</li> <li>• to update, correct or retract information previously released to the market;</li> <li>• not to enter into or perform an agreement or transaction;</li> <li>• to cancel or reverse an agreement or transaction;</li> <li>• to seek approval from security holders to enter into an agreement or transaction;</li> <li>• to include specified information in a notice of meeting;</li> <li>• to enforce a provision in the entity's constitution required under the listing rules;</li> <li>• to enforce any provision in a deed or legal document entered into under the listing rules; and</li> <li>• to introduce or update a compliance policy or process.</li> </ul>
<b>Power to Censure</b>	
<b>Current rule</b>	<p>ASX does not have a formal power to censure listed entities.</p>
<b>Proposed amendments</b>	<p>The proposed amendments will empower ASX to formally censure a listed entity that breaches the listing rules, or a condition imposed under the listing rules, and to publish the censure and the reasons for it to the market.</p>
<b>Correcting gaps or errors in the listing rules</b>	
<b>Ratifying an Agreement for the purposes of Listing Rule 7.1</b>	
<b>Current rule</b>	<p>Security holders cannot ratify an agreement to issue securities so that the agreement does not reduce the entity's 7.1 placement capacity. Currently, listing rules 7.4 and 7.5 only permit the actual issue of those securities to be ratified.</p>
<b>Proposed amendments</b>	<p>Security holders can now ratify an agreement to issue securities made without approval under listing rule 7.1.</p>

Calculating Placement Capacity under Listing Rules 7.1 and 7.1A	
Current rule	<p>An entity can use its placement capacity under listing rule 7.1 or 7.1A in order to issue convertible securities that convert into fully paid ordinary securities, convert those securities shortly thereafter and then have the resulting ordinary securities increase the entity's placement capacity. Similarly, the entity can also use its placement capacity to enter into an agreement to issue fully paid ordinary securities, complete that agreement shortly thereafter and then have the newly issued ordinary securities increase its placement capacity.</p> <p>This is because the resulting securities in both of the above examples are issued pursuant to an exception in listing rule 7.2. Securities issued pursuant to an exception in listing rule 7.2 are included in variable A of the placement capacity formula.</p>
Proposed amendments	<p>ASX is proposing to amend the placement capacity formula so that securities issued pursuant to the conversion of a convertible security or under an agreement to issue securities will only be included in variable A if security holders approved the convertible security or agreement under listing rule 7.1 or 7.4.</p>

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