

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 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.

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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

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*.

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

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;
- to avoid the disclosure obligations the entity would otherwise have under the Listing Rules and sections 674 and 675 of the Corporations Act 2001 (Cth);¹¹ or

⁵ Listing Rule 17.11.

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.

¹¹ Referred to in this Guidance Note as the 'Corporations Act'. Unless otherwise indicated, references in this Guidance Note to sections of an Act are to sections of the Corporations Act.

- to deny minority security holders a market for their securities in order to coerce them into accepting a current or planned offer from a controlling security holder to buy their securities at an undervalue.

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 guidance 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.

In most cases, ASX Listings Compliance will recommend that an entity apply for in-principle advice 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 section 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:

- information about the number of holders of the entity's securities and the size of their holdings;
- 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 after, its removal from the official list,

and attach a draft of the announcement referred to in section 2.4 below that the entity proposes to make in relation to its request to be removed from the official list.

Any in-principle advice given by ASX will be expressed as a non-binding statement of ASX's intent based on the facts known at the time. It may be given subject to conditions and will usually be expressed to apply for a limited time only (typically 3 months). It is treated by ASX as a confidential communication and is not released by ASX to the market.¹⁴

Guidance Note 17 *Waivers and In-Principle Advice* has further guidance on applying for in-principle advice.

2.3. Procedure for formally requesting removal

Unless the entity is already in a trading halt or suspension, an entity intending to make a formal request to be removed from the official list should request an immediate trading halt, with the reason stated for the halt being that it is proposing to make an announcement concerning an application to be removed from the official list.

As soon as practicable thereafter, the entity should lodge a formal request in writing to be removed from the official list. The request should be on its letterhead,¹⁵ addressed to the General Manager ASX Listings Compliance, clearly

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 Noting that if it appears to ASX that information about the request has ceased to be confidential (as evidenced by media speculation, market rumours or an unexplained material movement in the price or traded volumes of the entity's securities), ASX may require the entity to disclose information about the request (and, where applicable, ASX's response) under Listing Rule 3.1 and/or 3.1B.

¹⁵ Listing Rule 15.5.

marked “Not for public release”¹⁶ and sent to its ASX Listings Compliance home branch.¹⁷ The request should be executed under the entity’s common seal (if it has one) or else signed by its chairman of directors or its chief executive officer. If it is signed by anyone else, ASX may 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.¹⁸

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

- information about the number of holders of the entity’s securities and the size of their holdings;
- 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 after, its removal from the official list.

Accompanying the formal request should be a draft of the announcement the entity proposes to make regarding the request under section 2.4 below. The entity should not release the announcement to the market unless and until it has been approved by ASX Listings Compliance.

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

As soon as practicable after making its formal request for removal, the entity should make an announcement to the market that has been approved by ASX Listings Compliance and that sets out the following information:¹⁹

- 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 (including whether or not it will become an “unlisted disclosing entity” under the Corporations Act following its removal from the official list and the ramifications that will follow from it being, or not being, an “unlisted disclosing entity”²⁰);
- what, if any, arrangements will be in place to enable security holders to sell their securities in the lead up to, and after, its removal from the official list and how those arrangements can be accessed;
- 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;
- if the entity has not received in-principle advice from ASX that it will agree to the request, a statement to the effect that:

¹⁶ Listing Rule 15.6.

¹⁷ Listing Rule 15.2.2.

¹⁸ Listing Rule 17.11.

¹⁹ 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.

²⁰ See ‘4 Ongoing continuous disclosure obligations’ on page 16).

- 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; and
- an explanation of the remedies that security holders may pursue under:
 - Part 2F.1 of the Corporations Act (or any equivalent overseas legislation) if they consider the removal contrary to the interests of security holders as a whole or oppressive to, unfairly prejudicial to, or unfairly discriminatory against, a security holder or security holders; or
 - Part 6.10 Division 2 Subdivision B of the Corporations Act (or any equivalent overseas legislation) if they consider the removal involves "unacceptable circumstances".

The entity should not release an announcement about the removal request unless and until it has been approved by ASX Listings Compliance.

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 made on behalf of ASX by ASX Listing Compliance.²¹ ASX'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,²² listed on another exchange;
- an ASX Debt Listing that is, or will be,²³ listed on another exchange; or
- an ASX Foreign Exempt Listing with a primary listing on another exchange,²⁴

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.²⁵

In these 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 volition²⁶). This is on the basis

²¹ Some removal decisions, such as removal for non-payment of annual listing fees under Listing Rule 17.15, occur automatically without a decision by ASX Listings Compliance (see '3.2 Automatic suspension and removal for failure to pay annual listing fee' on page 14).

²² 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.

²³ See note 22.

²⁴ An ASX Foreign Exempt Listing must be a foreign entity that has its overseas home exchange a stock exchange or market which is acceptable to ASX (see Listing Rule 1.11 condition 1 and section 2.1 of Guidance Note 4 *Foreign Entities Listing on ASX*).

²⁵ 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.

²⁶ See note 13 above.

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 these 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,²⁷ in form and substance satisfactory to ASX, setting out:
 - the nominated time and date²⁸ 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):²⁹
 - 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 Nominee³⁰ if holders do not convert their CDIs to the underlying securities by a nominated date;³¹ 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 by way of a special resolution;³² and

²⁷ 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.

²⁸ This time and date is to be ascertained by discussions between the entity and ASX Listing Compliance.

²⁹ For further guidance on CDIs, see Guidance Note 5 *Chess Depository Interests*.

³⁰ See ASX Settlement Operating Rules 13.5A.2 and 13.5A.3.

³¹ This date is to be ascertained by discussions between the entity and ASX Settlement.

³² While Listing Rule 14.9 provides that an approval under the Listing Rules usually means an approval by ordinary resolution, ASX considers that the impact on minority security holders of a resolution approving the removal of an entity from the official list to be sufficiently

- the removal of the entity from the ASX official list not take place any earlier than one month (or, in the case of certain illiquid trusts mentioned in section 2.9 below, three months) 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.

All holders of ordinary securities (including, for the avoidance of doubt, those with a 75%+ security holding who can secure the passage of a special resolution by their own vote), will generally be permitted to vote on the special resolution approving an entity's removal from the official list, except in the following five cases:³³

- where ASX is concerned that the removal may be intended, in part,³⁴ 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 under Listing Rule 14.11 – in which case, ASX may impose an equivalent voting exclusion on the removal resolution;
- where ASX is concerned that the removal will have the effect that the entity will no longer be subject to the disclosure obligations the entity would otherwise have under the Listing Rules and sections 674 and 675³⁵ of the Corporations Act³⁶ – in which case, ASX may impose a voting exclusion on any party whom ASX considers will have a material informational advantage over other security holders as a result of those disclosure obligations no longer applying to the entity, and their associates;³⁷
- where ASX is concerned that a security holder or their associates are likely to obtain some other material advantage or benefit from the entity no longer being listed on ASX that is or may not be available to other security holders generally – in which case, ASX may impose a voting exclusion on that security holder and their associates;
- where the entity has been the subject of a takeover bid in the preceding 12 months³⁸ 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 –

serious as to warrant a special, rather than an ordinary, resolution. The Listing Rules do not define the expression "special resolution" and so it takes its meaning under the Corporations Act (see Listing Rule 19.3). Under that Act, for a resolution to be a special resolution: (a) the notice of meeting proposing the resolution must state both the intention to propose the resolution as a special resolution and the terms of the resolution; and (b) it must be passed by at least 75% of the votes cast by members entitled to vote on the resolution (see section 249L (Australian companies) and 252J(c) (registered managed investment schemes)). Even though the expression "special resolution" is only defined in the Corporations Act in relation to an Australian company and a registered management investment scheme, ASX extends the definition to apply to listed foreign companies and to listed Australian and foreign trusts that are not registered managed investment schemes.

³³ The voting exclusions referenced in the text will be imposed by ASX pursuant to its discretion in that regard under Listing Rule 14.11.1 (see the final row of the table set out in that rule).

³⁴ 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.

³⁵ Noting that, in many cases, an entity that is removed from the ASX official list is likely to become an "unlisted disclosing entity" and therefore subject to the continuous disclosure obligations in section 675 of the Corporations Act: see '4. Ongoing continuous disclosure obligations' on page 16.

³⁶ Again, 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 disclosure obligations the entity would otherwise have under the Listing Rules and sections 674 and 675 of the Corporations Act, ASX may refuse to act on the request.

³⁷ The issue of informational advantage will generally arise in the context of a controlling security holder or directors and senior managers, where they may reasonably be expected to have better access to information about the entity and its performance than security holders generally.

³⁸ 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.

in which case, ASX will require the removal to be approved by the entity's security holders and will also impose a voting exclusion on the bidder and its associates; or

- where ASX otherwise considers it appropriate in any specific case to impose a voting exclusion on a resolution approving an entity's removal from the official list.

The second last requirement above 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 all cases covered by this section, ASX will also usually impose a condition that the entity include in or 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:

- (a) the time and date³⁹ at which the entity will be removed from the ASX official list if that approval is given;
- (b) 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;
- (c) if its securities are traded on ASX in the form of CDIs:
 - 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 Nominee⁴⁰ if holders do not convert their CDIs to the underlying securities by a nominated date;⁴¹ and
- (d) the other information to be included in the notice of meeting set out in section 2.11 below.

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 the entity 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 in the notice convening the meeting of security holders to approve its removal from the official list.

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.

³⁹ This time and date is to be ascertained by discussions between the entity and ASX Listing Compliance.

⁴⁰ See ASX Settlement Operating Rules 13.5A.2 and 13.5A.3.

⁴¹ This date is to be ascertained by discussions between the entity and ASX Settlement.

In these 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, having regard to what is taking place vis-à-vis the entity's ordinary securities and the relative number and value of the securities in the relevant class or classes compared to the number and value of the entity's ordinary securities. 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 by way of a special resolution. In some cases, ASX 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 the entity from the official list and to receive the proceeds in Australian dollars. And, in some cases, ASX may do both.

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 paragraphs (a), (b), (c) and (d) in section 2.7 above to be included in or with the notice convening the meeting of security holders to approve its removal from the official list.

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 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 these cases, ASX will usually require the entity to obtain the approval of its security holders to its removal from the official list by way of a special resolution. 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.

ASX will also generally impose a condition requiring equivalent information to that mentioned in paragraphs (a), (b), (c) and (d) in section 2.7 above to be included in or with the notice convening the meeting of security holders to approve its removal from the official list.

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;⁴²
- excluding the bidder and its related bodies corporate, the number of holders of ordinary securities having holdings with a value of at least \$500⁴³ 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.

⁴² See note 56 below.

⁴³ 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.

In these cases, 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.⁴⁴

In these cases, 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 date⁴⁵ 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.⁴⁶

Where an entity seeks the approval of security holders to its 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 consequences for the entity and its security holders if it is removed from the official list (including whether or not it will become an "unlisted disclosing entity" under the Corporations Act following its removal from the official list and the ramifications that will follow from it being, or not being, an "unlisted disclosing entity"⁴⁷);
- 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 voting exclusions applied by ASX;⁴⁸
- details of any other conditions that ASX requires to be satisfied before it will act on the request for removal from the official list;

⁴⁴ See Listing Rules 12.4 and 17.12.

⁴⁵ This time and date is to be ascertained by discussions between the entity and ASX Listing Compliance.

⁴⁶ See *Bulfin v Bebarfalds Ltd* (1938) 38 SR (NSW) 423 and *Chequepoint Securities Ltd v Claremont Petroleum NL* (1986) 11 ACLR 94.

⁴⁷ See '4 Ongoing continuous disclosure obligations' on page 16).

⁴⁸ A voting exclusion is effected by including a "voting exclusion statement" in the notice of meeting, that is, a statement to the effect that the entity will disregard any votes cast in favour of the resolution by or on behalf of an excluded person or an associate of an excluded person, save where it is cast by:

- a person as proxy for a person who is entitled to vote, in accordance with the directions on the proxy form; or
- the person chairing the meeting as proxy for a person who is entitled to vote, in accordance with a direction on the proxy form to vote as the proxy decides (see Listing Rules 14.11 and 14.11.1).

- details of any buy-back or other facility the entity is proposing to put in place that allows the holders of its 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;
- to the extent the entity is aware of it, information about the intentions of material security holders to participate in any such buy-back or other facility;
- an explanation of the remedies that security holders may pursue under:
 - Part 2F.1 of the Corporations Act (or any equivalent overseas legislation) if they consider the removal contrary to the interests of security holders as a whole or oppressive to, unfairly prejudicial to, or unfairly discriminatory against, a security holder or security holders; or
 - Part 6.10 Division 2 Subdivision B of the Corporations Act (or any equivalent overseas legislation) if they consider the removal involves “unacceptable circumstances”.
- the other information mentioned in sections 2.7, 2.8 and 2.9 above (as applicable) that ASX requires to be included in the notice of meeting; and
- any other information specified by ASX, having regard to the particular circumstances of the entity and its proposed removal from the official list.

This information may be given in the notice itself or in an accompanying explanatory memorandum to security holders.⁴⁹

The information about the entity’s reasons for seeking removal from the official list is expected to be reasonably detailed. For example, if one of the reasons put forward for seeking removal is to save the costs associated with an ASX listing, the notice of meeting should include a breakdown of the amounts the entity expects to save, and specify any additional expenses it is likely to incur, if it is removed from the official list. Similarly, if one of the reasons for seeking removal is because the entity is not obtaining the benefits of a listing due to a lack of liquidity in the market for its securities on ASX, the notice of meeting should explain what steps the entity intends to take to provide its security holders with greater liquidity once it has been removed from the ASX official list.

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.⁵⁰

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.

2.12. Voting exclusions

Where ASX imposes a voting exclusion on a resolution seeking the approval of security holders to an entity’s removal from the official list, it is the responsibility of the entity to identify all security holders who are caught by the voting exclusion and to ensure either that they do not vote in favour of the resolution or, if they do, their votes are identified and excluded from the result of the vote.

As a practical matter, this will require the entity to conduct a poll on the resolution. Such a resolution should not be passed on a show of hands.

ASX may require an entity to appoint its auditors, or some other person acceptable to ASX, to act as a scrutineer to decide the validity of votes cast on a resolution seeking the approval of security holders to an entity’s removal

⁴⁹ Listing Rule 14.1.

⁵⁰ Listing Rules 15.1 and 15.1.4. The draft notice should be sent by way of email to the entity’s home branch Listings Adviser in accordance with Listing Rule 15.2.2. ASX generally tries to review and notify the entity whether it objects to a draft notice of meeting within 5 business days of receipt. ASX will tell an entity within 5 business days if it needs more time to examine a draft notice of meeting.

from the official list and whether the votes that should have been disregarded were in fact disregarded.⁵¹ Whether ASX does so or not, the entity should ensure that it conducts a properly supervised voting process and keeps appropriate records of that process to validate that the resolution has been properly passed.

If ASX is not satisfied that an entity has conducted a properly supervised and recorded voting process in relation to a resolution seeking the approval of security holders to an entity's removal from the official list, ASX may require the entity to seek a fresh approval from its security holders.⁵²

2.13. Supplementary disclosures

Where materially new or different information emerges after a notice of meeting proposing a resolution seeking the approval of security holders to an entity's removal from the official list has been sent to security holders but before the vote on the resolution, the entity may need to make supplementary disclosure to security holders. This should be done in sufficient time ahead of the meeting to allow security holders to consider, and if necessary take advice on, how the new or different information should affect their vote on the resolution.

In line with ASIC guidance on similar matters,⁵³ ASX generally considers that security holders should receive⁵⁴ the supplementary information at least 10 days before they are required to vote. Anything less may warrant an adjournment of the meeting or the calling of a new meeting.

2.14. Notification of meeting results

Immediately after a meeting has been held to consider a resolution seeking the approval of security holders to an entity's removal from the official list, the entity must notify ASX of the outcome of the resolution by way of a market announcement.⁵⁵

If security holders have approved its removal from the official list, ASX will expect the announcement to reiterate the information mentioned in paragraphs (a), (b) and (c) in section 2.7 above.

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,⁵⁶ 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 class⁵⁷ that the bidder is entitled to acquire their securities.⁵⁸

⁵¹ Listing Rule 14.8.

⁵² ASX may do this either by treating the original resolution as not being effective for the purposes of the Listing Rules or by imposing a requirement in that regard under Listing Rule 18.8.

⁵³ See section E of ASIC Regulatory Guide 60 *Schemes of arrangement*.

⁵⁴ Generally speaking, this information should be sent to security holders in the same manner as the original notice of meeting. However, in an appropriate case, ASX may agree to allow the information to be disseminated by a market announcement published on the ASX Market Announcements Platform.

⁵⁵ 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.

⁵⁶ 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.

⁵⁷ 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.

⁵⁸ 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).

Similarly, where a 90% holder proceeds with the compulsory acquisition of an entity's securities under Part 6A.2 of the Corporations Act,⁵⁹ ASX will automatically suspend quotation of those securities 5 business days after it receives written notice from the entity that:

- 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.⁶⁰

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.⁶¹ 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,⁶² ASX will automatically suspend quotation of its securities.⁶³ 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.⁶⁴ 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 declining 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,⁶⁵ 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 diligence⁶⁶ and to exercise their powers in good faith and for a proper purpose.⁶⁷ In some cases, it could also leave the entity open to an action for oppressive conduct⁶⁸ or "just and equitable" winding up.⁶⁹

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.

⁵⁹ 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 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.

⁶⁰ 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).

⁶¹ Listing Rule 17.14.

⁶² As required under Listing Rule 16.5.

⁶³ Listing Rule 17.6. ASX will not waive this rule.

⁶⁴ Listing Rule 17.15. ASX will not waive this rule.

⁶⁵ Listing Rule 19.2.

⁶⁶ See sections 180(1) (listed companies) and 601FD(1)(b) (listed trusts) of the Corporations Act.

⁶⁷ 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.

⁶⁸ See sections 232 and 461(1)(f) and (g) of the Corporations Act.

⁶⁹ See sections 461(1)(k) (listed companies) and section 601ND(1)(a) (listed trusts) of the Corporations Act.

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
- it is appropriate for some other reason.⁷⁰

ASX has exercised its power to remove entities from the official list for:

- persistent or egregious breaches of their continuous and periodic disclosure obligations under the Listing Rules;⁷¹
- refusing to comply with their obligations under the JORC Code;⁷²
- breach of their obligations to have, in ASX's opinion, a sufficient level of operations or an adequate financial condition to warrant the continued quotation of their securities and their continued listing;⁷³
- failing 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;⁷⁴ and
- not having a structure and operations appropriate for a listed entity.⁷⁵

The power to terminate an entity's listing is not one that ASX exercises lightly, since it takes away from the entity's security holders the ability to trade their securities on a licensed securities exchange. However, it is a power that ASX will exercise to protect the reputation and integrity of the ASX market and to prevent future investors from buying into a listed entity that in ASX's opinion should not be listed on the ASX market.

3.4. Automatic removal of entities suspended for an unacceptably long period

ASX's policy⁷⁶ is to remove from the official list:

- an entity that fails to lodge any of the documents referred to in Listing Rule 17.5⁷⁷ for a continuous period of 1 year after the deadline for lodgement of that document; and
- an entity whose securities have been suspended from quotation for a continuous period of 2 years,⁷⁸

whichever occurs first. The removal will usually take effect from the open of trading on the first trading day after the expiration of the 1 or 2 year period referred to above.

ASX may agree to a short extension of the 1 and 2 year deadlines above for automatic removal 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

⁷⁰ Listing Rule 17.12.

⁷¹ Chapters 3 and 4 of the Listing Rules.

⁷² Chapter 5 of the Listing Rules.

⁷³ Listing Rules 12.1 and 12.2 respectively.

⁷⁴ Listing Rule 12.4.

⁷⁵ Listing Rule 12.5.

⁷⁶ This policy will come into effect on Monday 3 February 2020. Unless ASX decides otherwise, entities that have failed to file any of the documents referred to in Listing Rule 17.5 on or before 31 January 2019 and have not rectified that failure by the close of trading on Friday 31 January 2020 will be automatically removed from the official list at the commencement of trading on Monday 3 February 2020. Likewise any other entities that have been continuously suspended since on or before 31 January 2018 and remain suspended at the close of trading on Friday 31 January 2020 will be automatically removed from the official list at the commencement of trading on Monday 3 February 2020.

⁷⁷ The documents referred to in Listing Rule 17.5 include an annual report, preliminary final report, annual accounts, half yearly accounts, quarterly activity report, quarterly cash flow report and an Appendix 4F (when required). Listing Rule 17.5 provides for the automatic suspension of an entity that fails to lodge any such document by the due date under the Listing Rules.

⁷⁸ ASX considers this to be "appropriate" for the purposes of Listing Rule 17.12 (see note 70 and accompanying text).

resumption of trading in its securities. For these purposes, being in the “final stages” of implementing a transaction means that the entity has:

- announced the transaction to the market;
- 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, lodged that document with ASIC and it is not the subject of a stop order or other regulatory action by ASIC; and
- if the transaction requires approval by security holders or from a governmental agency or financier, obtained all such approvals.

The extension, if granted, will usually 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). Before it will grant the extension, ASX must be satisfied that the entity is reasonably capable of consummating the transaction and will be ready for trading in its securities to resume (including having lodged all outstanding accounts with ASX) within the period of the extension.

ASX may also agree to a short extension of the 1 year deadline above for automatic removal of an entity that has been suspended from quotation under Listing Rule 17.5 for failure to lodge accounts, if an external administrator has been appointed to the entity and the administrator has the benefit of a deferral of financial reporting obligations under ASIC Corporations (Externally-Administered Bodies) Instrument 2015/251. In this case, the extension, if granted, will usually be for no more than 6 months after the appointment of the administrator.⁷⁹

For the avoidance of doubt, ASX can, and will in appropriate circumstances, remove an entity from the official list under Listing Rule 17.12 even if it has not been suspended for the 1 or 2 year periods referred to above. This is especially the case if, in ASX’s opinion, the entity no longer has a sufficient level of operations or an adequate financial condition to warrant its continued listing (Listing Rules 12.1 and 12.2), its structure and operations have ceased to be appropriate for a listed entity (Listing Rule 12.5) or the entity appears to ASX to have committed serious or wilful breaches of the Listing Rules (including failing to respond in a satisfactory manner to enquiries by ASX under Listing Rule 18.7).

4. Ongoing continuous disclosure obligations

An entity that is removed from the official list of ASX should note that, in many cases, it is likely to become an “unlisted disclosing entity” subject to the continuous disclosure obligations in section 675 of the Corporations Act.⁸⁰ These are substantively the same as those imposed under section 674 of the Corporations Act and Listing Rule 3.1.

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.

⁷⁹ This 6 month period is the same period during which the entity’s financial reporting obligations are deferred under ASIC Corporations (Externally-Administered Bodies) Instrument 2015/251.

⁸⁰ This will apply, for example, under section 111AF(1) of the Corporations Act if:

- (a) as part of its listing or any time subsequently, the entity has lodged a disclosure document with ASIC in relation to a class of securities;
- (b) after an issue of securities in that class pursuant to the disclosure document, 100 or more persons held securities in that class; and
- (c) securities in that class have been held by 100 or more persons at all times since that issue of securities.

See also sections 111AF(2), 111AFA and 111AG for other circumstances where an entity may become an unlisted disclosing entity.