



**Proposed policy changes:  
Long-term suspended entities  
(Guidance Note 33)**

**ASX Public Consultation**

**12 September 2013**

## Introduction

1. There are over 100 ASX-listed entities that currently have their securities suspended from official quotation for a variety of reasons, such as a failure to lodge periodic reports by the due date, appointment of an administrator or receiver, or where the entity has announced that it is pursuing a backdoor listing transaction. Of these, close to 70% have had their securities suspended continuously for 12 months or more (“long-term suspended entities”). A small number have had their securities suspended for as long as a decade.
2. Earlier this year, ASX agreed with ASIC to publish its processes for reviewing long-term suspended entities on its website so as to provide greater transparency to the market about its processes (see [ASIC Report 345 - ASIC Market Assessment Report: ASX Group](#) released in May 2013).
3. ASX has reviewed its policy with respect to long-term suspended entities and determined that it is appropriate for ASX to automatically delist long-term suspended entities if their securities have been suspended from trading for a continuous period of three years.
4. These proposals are set out in the accompanying proposed new Guidance Note 33: *Removal of entities from the official list*, in particular under heading ‘3.4 Automatic removal of long-term suspended entities’. Guidance Note 33 also deals with removal of entities from the official list more generally, including removal at the entity’s request.
5. This new policy will help address issues that have been raised about suspended entities being “left in limbo” for too long. Security holders make the point that it is often better from their perspective if an entity with no immediate prospects is wound up and surplus assets returned to them. In addition to avoiding further value leakage for security holders through ongoing administration costs and directors’ fees, it may also enable them to crystallise a loss for tax purposes.

## This consultation

6. The purpose of this consultation is to seek feedback on:
  - ASX’s proposals to automatically remove from the official list any entity whose securities have been suspended from trading for a continuous period of three years;
  - ASX’s proposals for the transitional arrangements that would apply to entities that have been suspended for 12 months or more at the time the policy takes effect (see below); and
  - the other more general policy settings in Guidance Note 33.
7. ASX is inviting comment from listed entities, their advisers and other stakeholders on its policy positions in Guidance Note 33. ASX is particularly interested in feedback on the proposed transition arrangements for the new policy on automatic de-listing after three years’ continuous suspension and whether there might be any unforeseen consequences for listed entities in the adoption of the new policy.
8. If you wish to provide comments, please do so by Friday 1 November 2013 to the following email address: [mavis.tan@asx.com.au](mailto:mavis.tan@asx.com.au).
9. ASX is proposing to make the submissions it receives in response to this consultation paper publicly available on its website unless a respondent clearly indicates that they wish their submission to remain confidential.
10. ASX will be reviewing the feedback received from this consultation internally to determine whether it is appropriate to amend its proposed policy positions before publishing Guidance Note 33 in final form.
11. ASX hopes to release the final version of Guidance Note 33 in November 2013 with an effective start date of 1 January 2014.

## Treatment of long-term suspended entities prior to September 2001

12. Before it was deleted in September 2001, Listing Rule 17.13 provided that an entity that was continuously suspended from quotation for 12 months was automatically removed from the official list at the end of the 12 months. The intent of Listing Rule 17.13 was to provide an expeditious means of removing moribund entities from the official list.

13. Listing Rule 17.13 was deleted because it proved administratively difficult to apply. A period of 12 months was not necessarily long enough to enable an entity to fully explore opportunities that might lead to the reinstatement of trading in its securities, and the rigorous application of the rule after that period was not necessarily in the interests of its security holders. Consequently, ASX regularly granted waivers of the rule on the basis of a submission received from a suspended entity stating that it was actively working towards reinstatement of its securities to quotation and that to remove it from the official list would be prejudicial to its security holders.

## The current long-term suspended entity review process

14. Following the deletion of Listing Rule 17.13, ASX implemented an annual review of long-term suspended entities to determine which of them should be considered as potential candidates for removal from the official list under Listing Rules 12.1, 12.2 and 17.12.
15. Listing Rule 12.1 requires that the level of an entity's operations must, in ASX's opinion, be sufficient to warrant the continued quotation of the entity's securities and its continued listing. Listing Rule 12.2 requires that an entity's financial condition (including operating results) must, in ASX's opinion, be adequate to warrant the continued quotation of the entity's securities and its continued listing. Listing Rule 17.12 permits ASX to remove an entity from the official list if, in ASX's opinion, it is unable or unwilling to comply with a listing rule or removal is appropriate for some other reason.
16. ASX commences its review of long-term suspended entities in January each year. The review generally includes any entity that has been continuously suspended for 12 months or more, where ASX has concerns that the entity may not resume normal trading in the following 6 to 12 months. This would typically include:
  - an entity subject to or released from administration which has minimal assets and no active business;
  - an entity that has failed to comply with periodic financial reporting requirements during its suspension; and
  - an entity that has not made any announcements since its suspension relevant to its potential reinstatement.
17. ASX will generally exclude from the review:
  - an entity that has been suspended for a particular purpose (eg because it had disposed of its major asset) and is known by ASX to be actively working towards achieving reinstatement of its securities to trading;
  - an entity that has announced it is pursuing a backdoor listing transaction and that has been suspended from quotation by ASX under Listing Rule 11.1.3 and 11.3 pending re-compliance with Chapters 1 and 2; and
  - an entity in administration, where it appears to ASX that there is a reasonable prospect of the entity being recapitalised and its securities being reinstated to trading.
18. ASX sends letters to all entities selected for review asking that they show cause why ASX should not remove them from the official list under Listing Rule 17.12. Where an entity does not respond to ASX's letter, or its response does not indicate that it is pursuing a proposal that is likely to lead to the reinstatement of its securities to trading, ASX will formally consider whether to remove the entity from the official list.
19. Where, however, an entity's response indicates that it is pursuing a proposal that is likely to lead to the reinstatement of the entity's securities to trading, ASX generally will not remove the entity at that stage but will review the entity's circumstances again in the next annual review.
20. A long-term suspended entity will often submit year after year that it is actively working on one or more potential transactions that will, subject to security holder approval and compliance with ASX's (and other) requirements, result in the reinstatement of its securities to trading. Despite these submissions, many of these transactions do not come to pass and many long-term suspended entities do not achieve reinstatement of their securities to quotation. The current review process, therefore, allows long-term suspended entities to remain listed for long periods with their securities not trading, sometimes for as long as 10 to 12 years, before ASX exercises its power under Listing Rule 17.12 to remove them from the official list.

21. An entity removed from the official list under the process described above is entitled to appeal that decision to the ASX Appeal Tribunal. A significant proportion of long-term suspended entities that are removed from the official list under Listing Rule 17.12 appeal that decision to the Tribunal. While ASX is usually successful in having these appeals rejected, they are costly for all parties and a source of uncertainty and further value leakage for investors.

## Proposed policy change

22. ASX considers that having a policy, publicly expressed in a Guidance Note, that entities will be automatically removed from the official list after three years' continuous suspension will incentivise entities to actively pursue opportunities that will result in the reinstatement of their securities to trading within a reasonable period. It will also significantly reduce the scope for the types of appeals mentioned in the previous paragraph.
23. ASX considers that three years' continuous suspension is an appropriate period at which to impose an automatic de-listing and that this time frame strikes the right balance between:
- giving long-term suspended entities a reasonable period to pursue a transaction that may lead to the reinstatement of trading in their securities and incentivising them to do so that within that period; and
  - the Listing Rule requirements that only entities which have a sufficient level of operations and an adequate financial condition should be listed and traded on ASX.
24. ASX also proposes to retain the discretion to grant a short extension to the three year period if an entity can demonstrate to ASX's satisfaction that it is in the final stages of implementing an announced transaction that will lead to the resumption of trading in its securities.
25. This new policy to automatically remove a listed entity from the official list after three years' continuous suspension and the transitional arrangements for this policy are set out in section 3.4 of the accompanying new ASX Listing Rule Guidance Note 33 *Removal of entities from the ASX official list*.

## Transition arrangements

26. To rigidly impose an automatic de-listing after three years' continuous suspension against those entities already in suspension (particularly those that have already been suspended for three or more years) could be considered harsh.
27. ASX is therefore proposing transitional arrangements on the basis that the Guidance Note expressing the new policy will take effect from 1 January 2014, to coincide with the normal annual long-term suspended entity review process. If as at 1 January 2014, an entity's securities have been continuously suspended:
- for 12 months or less, it will be subject to the new policy effective immediately – ie it will automatically be removed from the official list after three years' continuous suspension; or
  - for 12 months or more, it will be automatically removed from the official list on 1 January 2016 if its securities have not resumed trading.
28. In each case, ASX will retain the discretion to grant a short extension to the three year / 1 January 2016 automatic cut-off if the entity can demonstrate to ASX's satisfaction that it is in the final stages of implementing an announced transaction that will lead to the resumption of trading in its securities.
29. This will effectively give long-term suspended entities (ie those that have been suspended for 12 months or longer) a minimum two years grace to implement a transaction that will result in the reinstatement of their securities to trading.

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