

Updating ASX's admission requirements for listed entities

CONSULTATION PAPER

12 MAY 2016

ATTACHMENT E: PROPOSED CHANGES TO GUIDANCE NOTE 29





ASX LISTING RULES

Guidance Note 29

APPLYING FOR ADMISSION – ASX DEBT LISTINGS

The purpose of this Guidance Note	<ul style="list-style-type: none">To assist entities wishing to apply for admission to the official list of ASX as an ASX Debt Listing to prepare their application for listing
The main points it covers	<ul style="list-style-type: none">The listing process generallyTiming requirements under the Corporations Act for the lodgement of listing applicationsGuidance on particular admission requirementsGuidance on particular Corporations Act requirements
Related materials you should read	<ul style="list-style-type: none">Guidance Note 1 <i>Applying for Admission – ASX Listings</i>Guidance Note 4 <i>Foreign Entities Listing on ASX</i>Guidance Note 5 <i>CHESS Depository Interests (CDIs)</i>Guidance Note 7 <i>US Entities - Regulation S Offerings on ASX</i>Guidance Note 9 <i>Disclosure of Corporate Governance Practices</i>Guidance Note 17 <i>Waivers and In-Principle Advice</i>Guidance Note 20 <i>ASX Online</i>Guidance Note 30 <i>Applying for Quotation of Additional Securities</i>Guidance Note 34 <i>Naming Conventions for Debt and Hybrid Securities</i>

History: Guidance Note 29 amended [01/09/16](#). Previous versions of this Guidance Note were issued in 01/15, [09/15](#) and [12/15](#).

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Important notice: ASX has published this Guidance Note to assist applicants seeking an ASX Debt Listing 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 applicants 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 entities wishing to apply for admission to the official list of ASX Limited (ASX) as an ASX Debt Listing to prepare their application for listing.¹

An ASX Debt Listing can be applied for in relation to “wholesale securities”² – that is, debt securities whose terms allow the security to be held at all times only by wholesale clients, as defined in the Corporations Act 2001 (Cth).³ These securities are quoted on ASX’s wholesale loan securities market but are traded off-market and settled through the Austraclear system.⁴

¹ Listing Rules 1.8, 1.9 and 1.16 to 1.20 set out the main requirements for an entity to be admitted to ASX’s official list as an ASX Debt Listing. Listing rule 2.1 sets out the requirements for the initial quotation of a listed entity’s debt securities and listing rule 2.5 sets out the requirements for the quotation of additional classes of debt securities.

² See the definition of “wholesale security” in Listing Rule 19.12.

³ 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.

⁴ For more information on the wholesale loan securities market, see <http://www.asx.com.au/listings/debt-listing/non-quoted-securities-wholesale.htm>.

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An ASX Debt Listing can also be applied in relation to other debt securities ("retail securities") which are quoted and traded on the general ASX market and settled through the CHES⁵ system.

An ASX Debt Listing, be it for retail or wholesale securities, brings with it significant benefits. These include access to:

- one of the world's largest investment pools underpinned by Australia's mandatory superannuation system;
- price discovery in a deep and liquid market worth well over a trillion dollars;
- the world class trading platform and clearing and settlement infrastructure of ASX,

and the status that comes from being listed on one of the world's top 10 exchanges.

The quotation of debt securities on ASX will broaden the pool of potential investors in the securities to include investment managers whose mandates limit them to investing in listed securities. It may also help to attract an exemption from Australian withholding tax and thereby make them more appealing to investors who are not residents of Australia for tax purposes.⁶

This Guidance Note does not deal with applications for admission to the official list of ASX as an ASX Listing or as an ASX Foreign Exempt Listing.⁷ Guidance on those types of applications can be found in Guidance Note 1 *Applying for Admission – ASX Listings* and Guidance Note 4 *Foreign Entities Listing on ASX*.

Further guidance of relevance to foreign entities wishing to apply for admission to the official list of ASX as an ASX Debt Listing can also be found in Guidance Note 4 *Foreign Entities Listing on ASX*, Guidance Note 5 *CHES Depositary Interests (CDIs)* and Guidance Note 7 *US Entities - Regulation S Offerings on ASX*.

Guidance for entities that are already listed on how to prepare applications for quotation of additional securities can be found in Guidance Note 30 *Applying for Quotation of Additional Securities*. This includes guidance for entities admitted as ASX Debt Listings that subsequently wish to have equity securities quoted on ASX.

2. The listing process

2.1 Initial discussions in advance of application

Before submitting an application for admission to the official list, ASX recommends that applicants first discuss their application with ASX Listings Compliance at the earliest opportunity. Those discussions are best held with the branch office where the entity intends to lodge its application for admission. Generally, this should be the ASX branch office where the applicant will have its home branch if its application for admission is successful.⁸

ASX Listings Compliance will be able to provide general advice on the listing process and a preliminary view on the expected timeframe for listing, given its current workloads and the nature and complexity of the application. It

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⁵ CHES stands for 'Clearing House Electronic Subregister System'. CHES is a proprietary system operated by ASX Settlement that facilitates the clearing and settlement of trades in securities quoted on ASX and includes an electronic sub-register for the registration of title to securities issued by ASX-listed companies.

⁶ Sections 128F(1) and (2) of the Income Tax Assessment Act 1936 (Cth) exempt Australian resident companies from paying interest withholding tax on debentures or debt interests where their issue satisfies the "public offer test". Section 128F(3)(c) provides that the issue of a debenture or debt interest by a company satisfies the public offer test if it resulted from the debenture or debt interest being offered for issue as a result of being accepted for listing on a stock exchange, where the company had previously entered into an agreement with a dealer, manager or underwriter, in relation to the placement of debentures or debt interests, requiring the company to seek such listing.

⁷ Listing Rules 1.1 to 1.7 and 1.16 to 1.20 set out the requirements for an entity to be admitted to ASX's official list as an ASX Listing. Listing Rules 1.11 to 1.14 and 1.16 to 1.20 set out the requirements for an entity to be admitted to ASX's official list as an ASX Foreign Exempt Listing.

⁸ The ASX home branch for an entity looks after day-to-day matters relating to the entity's listing and makes decisions about the Listing Rules that affect it. There are currently home branches in Perth (servicing entities based in WA), Melbourne (servicing entities based in Victoria and Tasmania) and Sydney (servicing all other entities).

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can also provide information about available ASX trading codes and arrange the reservation of a suitable code for the applicant.⁹

In those initial discussions, the applicant should raise with ASX:

- in the case of retail securities, any unusual features of the applicant's structure or the terms of its debt securities that could raise issues under Listing Rule 1.8 condition 4 (the entity's structure and the terms of its debt securities must be appropriate for retail securities).¹⁰
- any unusual waivers from, or rulings in respect of, the Listing Rules that the applicant may be proposing to request in conjunction with its application; and
- any other circumstances that could lead to ASX exercising its discretion not to admit an entity to the official list.¹¹

The applicant should provide to ASX Listings Compliance all material information in its possession relevant to the matter being discussed so that the discussions are informed and meaningful. In some cases, it may be helpful if the entity provides a draft of its listing prospectus (or relevant sections of it) to facilitate the discussions.

In an appropriate case, ASX Listings Compliance may suggest to the applicant that it seek in-principle advice¹² from ASX about these matters before it goes to the effort and expense of lodging a listing application.

2.2 The admission application

To apply for admission to the ASX official list, an entity must complete an application in the prescribed form and give it to ASX. The prescribed form for an entity applying for an ASX Debt Listing is Appendix 1B – *ASX Debt Listing Application and Agreement*. An editable version of the Appendix 1B application can be downloaded from <http://www.asx.com.au/regulation/compliance/compliance-downloads.htm>.

The application must be properly completed, dated and executed by the entity seeking admission to the official list.¹³ It must also be accompanied by the Information Form and Checklist (ASX Debt Listings) published on the ASX website¹⁴ and all of the information and documents referred to in it that Form/Checklist. In the case of a retail offering, this includes a copy of the applicant's prospectus that has been lodged with the Australian Securities and Investments Commission (ASIC).¹⁵

ASX may reject or defer consideration of an application for listing that is not properly completed and executed or that is not accompanied by all of the required information and documents.

2.3 Requests for waivers

If the applicant is seeking a waiver from, or in-principle advice about the application of, any Listing Rule, the application should also include a letter from the entity or its advisers detailing the waiver or advice sought and providing the information set out in Guidance Note 17 *Waivers and In-Principle Advice*.

2.4 Processing time

ASX Listings Compliance aims to process applications for listing as quickly as it reasonably can, given its workloads at the time. Typically, an application for ASX Debt Listing will take ASX around four to six weeks to process, from

⁹ On the reservation of trading codes, see Guidance Note 18 *Market Codes and Status Notes*.

¹⁰ See '3.6 Appropriate structure and terms for retail securities' on page 14.

¹¹ See '2.7 The listing decision' on page 7.

¹² *Guidance Note 17 Waivers and In-Principle Advice* has guidance on how to apply for in-principle advice.

¹³ In the case of a trust, the application should be executed by the responsible entity of the trust.

¹⁴ An editable version of the Information Form and Checklist (ASX Debt Listings) can also be downloaded from <http://www.asx.com.au/regulation/compliance/compliance-downloads.htm>.

¹⁵ See '4.1 The requirement for a prospectus' on page 17.

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the time a completed application for listing and all other required documents are lodged with ASX, until a decision is made on whether or not to admit the applicant to the official list and quote its securities. It may take longer, however, if:

- the application raises any issues under Listing Rule 1.8 condition 4 (the entity's structure and the terms of its debt securities must be appropriate for retail securities¹⁷) or that might cause ASX to exercise its discretion under Listing Rule 1.19 to refuse the application;¹⁸
- the applicant is seeking an atypical number or type of waivers from the Listing Rules; or
- the applicant is making a non-underwritten offer of securities that is subject to a minimum subscription condition and it takes longer than four to six weeks to satisfy that condition.¹⁹

In either of the first two cases above, the applicant should discuss the matter with ASX Listings Compliance at the earliest opportunity to determine the impact that may have on its timetable for listing. In the third case above, the applicant should keep ASX apprised of its progress in satisfying its minimum subscription condition.

The time it takes ASX to process an application for listing is very much a function of the quality and completeness of the application. The better the quality of the application, the more quickly and efficiently ASX is likely to be able to process it. ASX therefore encourages applicants for listing to engage professional advisers who are experienced in ASX listings and to seek their advice and assistance in preparing their listing application.

Subject to the comments above, ASX Listings Compliance will generally try to process applications for listing within a timeframe that is consistent with the timetable outlined in any prospectus the applicant may be issuing in connection with a listing of retail securities or any offer document or information memorandum for a listing of wholesale securities. That said, if an applicant intends to specify in its prospectus, offer document or information memorandum a timetable that is shorter than four weeks from the date of lodgement of the application with ASX, it should discuss the matter with ASX Listings Compliance at the earliest opportunity to determine whether the proposed timetable can be accommodated.

2.5 Corporations Act deadlines for lodgement and quotation

If an entity has issued a prospectus in conjunction with its listing application, as most will in the case of retail securities,²⁰ the Corporations Act imposes strict timing requirements as to when the application for admission must be lodged with ASX and when admission to quotation of its securities must be achieved.

If a prospectus states or implies that the securities offered under it are to be quoted on ASX, then an application for admission to quotation must be made to ASX within 7 days, and the securities must be admitted to quotation within 3 months, after the date of the prospectus.²²

An entity should liaise with its professional advisers to ensure that a properly completed application for admission to the official list is lodged with ASX in sufficient time to satisfy these time limits.

An entity that has or may have difficulties meeting these time limits should refer to Part I (Minimum subscription and quotation conditions) of ASIC Regulatory Guide 254 Offering securities under a disclosure document for guidance on what to do. If it has any queries in that regard, it should direct them to ASIC, the regulatory body responsible for administering the Corporations Act, rather than ASX. The entity should keep ASX informed of any

¹⁷ See '3.6 Appropriate structure and terms for retail securities' on page 14.

¹⁸ See '2.7 The listing decision' on page 7.

¹⁹ Where the applicant is making a non-underwritten offer of securities that is subject to a minimum subscription condition, ASX may defer finalising its review of the application until it is advised by the applicant in writing that the minimum subscription condition has been, or is close to being, satisfied.

²⁰ Again, see '4.1 The requirement for a prospectus' on page 17.

²² See sections 723(3) and 724 of the Corporations Act. See also Part I (Minimum subscription and quotation conditions) of ASIC Regulatory Guide 254 Offering securities under a disclosure document (RG 254).

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Deleted: for retail securities¹⁶ – and the number and complexity of any waivers the applicant may be seeking from the Listing Rules. If an applicant has an unusual or complex corporate/capital structure, is proposing to issue

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(c) an issue or transfer of securities in response to an application made under the [prospectus] is void; and¶

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material developments and, if it lodges a "refresh document" with ASIC to extend its prospectus, it should provide a copy to ASX as soon as practicable thereafter.

An applicant generally should not issue any securities offered under a prospectus that states or implies that the securities offered under it are to be quoted on ASX unless and until:

- it receives a written notification from ASX that its application has been successful and ASX intends to admit the entity to the official list and to quote its securities; and
- it has a high degree of confidence that it will be able to meet any conditions that ASX may have imposed on its admission or the quotation of its securities.²³

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If it issues securities to investors under the prospectus and it finds that its securities are not admitted to quotation on ASX within the period prescribed by the Corporations Act, the issue is void and it will be obliged to return to investors the moneys they have paid under the prospectus, or else to obtain a court order extending the time limit for quotation.²⁴

An applicant should also note that it is required to hold any moneys received from an investor under a prospectus on trust for the investor until the investor is issued with the securities for which they have applied.²⁵ The applicant is not at liberty to expend any of those moneys before then.

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2.6 Payment of initial listing fee

An entity applying for admission to the official list must pay the applicable initial listing fee in accordance with Chapter 16 of the Listing Rules and the schedule of fees set out in Guidance Note 15A *ASX Schedule of Listing Fees*. This payment must be made at the time its lodges its application for listing.²⁶ ASX will not begin processing an application for listing until it has received the initial listing fee.

Payment can be made either by cheque made payable to ASX Operations Pty Ltd or by electronic funds transfer to the following account:

Bank: National Australia Bank
Account Name: ASX Operations Pty Ltd
BSB: 082 057
A/C: 494728375
Swift Code (Overseas Customers): NATAAU3302S

If payment is made by electronic funds transfer, the applicant should email its remittance advice to ar@asx.com.au or fax it to (612) 9227-0553, describing the payment as "initial listing fee" and including the name of the entity applying for admission, the ASX home branch where the entity has lodged its application (ie Sydney, Melbourne or Perth) and the amount paid.

²³ The requirement that securities be admitted to quotation on ASX within 3 months of a prospectus is only met when they are actually admitted to quotation on ASX and not when ASX advises the entity that it intends to admit the entity to the official list and/or to quote its securities (see RG 254.218-220).

²⁴ See section 723 and Table 9 in RG 254.

²⁵ See section 722. The Corporations Act does not specify how investor funds should be held other than saying that they must be held on trust. Best practice, however, would be for the funds to be paid into a separate and secure bank account set up specifically for that purpose, which is designated as a "trust account".

²⁶ As a practical matter, this means that the applicant will need to fund the payment of its initial listing fee from sources other than the subscriptions it intends to raise under its listing prospectus. This is for two reasons. First, lodgement of a listing application usually occurs at or before the start of the offer period under the applicant's listing prospectus, so the applicant typically will not have raised any subscriptions at that point. Secondly, as mentioned above in note 25 and the accompanying text, the applicant will be required to hold any moneys it receives from investors under its listing prospectus on trust for investors until they have been issued with their securities and so it cannot use those moneys for any purpose ahead of that issue.

If the applicant borrows money to pay its initial listing fee and intends to use the proceeds raised under its listing prospectus to repay the borrowing, this should be disclosed in the "use of funds" section of its prospectus.

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As mentioned below,²⁷ an entity should apply for quotation of, and pay the initial listing fee for, the maximum number of securities that can be quoted. If the actual number of securities eventually quoted is less than the amount applied for, ASX will refund the excess initial listing fees paid.²⁸

Further guidance about the calculation and payment of listing fees is set out in Guidance Note 15 *ASX Listing Fees*. In the case of retail securities, there is also a Listing Fee Calculator available online at: <http://www.asx.com.au/prices/cost-listing.htm>.

2.7 The listing decision

Decisions on whether or not an entity meets the conditions for admission to the official list and the quotation of its securities, and whether or not to grant any waiver requested or required in connection with its admission or the quotation of its securities, are generally made on behalf of ASX by the ASX National Listing Committee (NLC). The NLC's decision on these matters will be reduced to writing and communicated to the applicant by ASX Listings Compliance, usually via an emailed letter.

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ASX has an absolute discretion in deciding whether or not to admit an entity to the official list and to quote its securities, and is not required to give any reasons for its decision in that regard.²⁹ ASX may exercise its discretion not to admit an entity to the official list even where the entity meets, or is expected to meet, the specific conditions set out in the Listing Rules for listing and quotation. Examples where ASX may do so include where:

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- the applicant is established in an emerging or developing market³⁰ and ASX is not satisfied that the level of corporate regulation in that market is comparable to Australia;
- if the applicant is seeking to have retail securities quoted:
 - ASX is not satisfied that the applicant has an appropriate structure for retail securities;³¹ or
 - the applicant appears to ASX to be seeking a listing on ASX for collateral purposes unrelated to accessing Australian capital markets;
- ASX has had prior unacceptable dealings with the applicant or a director, promoter, broker, auditor, investigating accountant or professional adviser involved in the application;
- ASIC or another corporate regulator has expressed reservations to ASX about the admission of the applicant to the official list;
- the applicant has been denied admission to the official list of another exchange; or
- ASX otherwise has concerns that admitting the applicant to the official list otherwise may put at risk the reputation of the ASX market as one of quality and integrity.³²

Decisions on whether or not ASX should exercise its discretion not to admit an entity to the official list are generally made on its behalf by the ASX Policy and Listings Standards Committee (PLSC) on reference from the NLC.

ASX may impose such conditions on admission and/or quotation as it considers appropriate.³³

²⁷ See '3.5 Number of securities to be quoted' on page 13.

²⁸ Further details of the refund arrangements are set out in Guidance Note 15 *ASX Listing Fees*.

²⁹ Listing Rules 1.19 and 2.9.

³⁰ For these purposes, ASX regards any country that is on the list of developing countries declared by the Minister for Foreign Affairs for the purposes of the Overseas Aid Gift Deduction Scheme established by the Income Tax Assessment Act 1997 (available online at <http://dfat.gov.au/about-us/publications/Documents/list-developing-countries.pdf>) as an emerging or developing market.

³¹ See '3.6 Appropriate structure and terms for retail securities' on page 14.

³² The list of examples in the text where this discretion may be exercised is not intended to be exhaustive.

³³ Listing Rules 1.19 and 2.9.

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In practice, ASX's decision to admit an entity as an ASX Debt Listing and quote its securities is usually expressed to be subject to a number of conditions that must be satisfied before the decision becomes effective.

In the case of retail securities, the conditions typically will include:

- the close of the offer under the applicant's prospectus and the completion of the issue of any required minimum subscription;
- confirmation in a form acceptable to ASX (usually a bank statement) that the applicant has received cleared funds for the full amount of the issue price under the prospectus; and
- mailing of CHES or issuer sponsored holding statements to the successful applicants.

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In the case of wholesale securities, the conditions typically will include:

- provision to ASX of the documents setting out the terms of the securities for which quotation has been granted along with any other transaction documents required by ASX;
- that the entity applies for and is granted quotation of a series or tranche of debt securities within 6 months of the entity's admission to the official list of ASX;
- that the debt securities may only be traded on ASX in parcels with a minimum value of \$500,000 and may only be transferred, whether on ASX or elsewhere in or from Australia, if it is a condition of the debt securities that a transfer may only be made to a person who is not a retail client, within the meaning of section 761G of the Corporations Act 2001; and
- that the debt securities must be rated at least "investment grade" by any of Moody's Investor Services Inc., Standard & Poors, Inc., and Fitch, Inc., or any other credit rating agency advised to the market by ASX from time to time for this purpose (or any of their subsidiaries), and no credit rating agency has issued a rating less than "investment grade" in relation to those debt securities.

Once ASX is satisfied that the entity has met all applicable admission and quotation conditions, ASX will notify the entity of the date on which trading in its securities will commence.

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2.8 Documents released to the market

After ASX has admitted an entity to the official list, and prior to the commencement of quotation, a number of documents will be released to the market through the ASX Market Announcements Platform as pre-quotation disclosure. These documents will typically include:

- the entity's Appendix 1B application form and the accompanying Information Form and Checklist (ASX Debt Listings);
- in the case of wholesale securities, the offer document or information memorandum issued by the entity in connection with the securities;³⁴
- a copy of the documents provided to ASX setting out the terms of the securities³⁵ including, if there is a deed poll or trust deed for the securities, a copy of the deed poll or trust deed;
- any other relevant transaction documents provided in relation to the securities (eg, in the case of wholesale loan securities, any series notice, series supplement, pricing supplement, registry services agreement, dealer's agreement or other legal document or notice relating to the securities); and

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³⁴ In the case of retail securities, ASX will usually already have released a copy of the applicant's prospectus on the ASX Market Announcements Platform ahead of the listing decision, after the applicant has been set up in ASX's systems with an appropriate code and entity details (see note 127 and accompanying text below).

³⁵ Being the documents given to ASX under Listing Rule 2.1 condition 5 – see note 34 and accompanying text.

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- any financial statements (including annual reports) given to ASX with the application.

The documents released on the ASX Market Announcements Platform with an admission application for an ASX Debt Listing will not include any underwriting agreement,³⁶ legal opinions³⁷ or letter applying for a waiver or in-principle advice provided to ASX in connection with the listing application.

If the applicant has received a waiver of any Listing Rule in connection with its admission, ASX may require the entity to disclose on the ASX Market Announcements Platform the fact that it has received the waiver and the terms of the waiver.

2.9 Requirements for additional information

ASX may require an applicant for listing to disclose additional information over and above that required under Appendix 1B and the accompanying Information Form and Checklist.³⁸

ASX may submit, or require the applicant to submit, any information given to ASX to the scrutiny of an expert selected by ASX.³⁹

ASX may also impose a condition on admission or quotation that the applicant disclose certain information to the market before its admission to the official list or quotation commences.⁴⁰

2.10 Responsibility for materials provided with a listing application

An officer or employee of a corporation who gives, or authorises or permits the giving of, materially false or misleading⁴¹ information to ASX in connection with a listing application by the corporation:

- knowingly, breaches section 1309(1) of the Corporations Act, which is a criminal offence punishable by a fine of up to 200 penalty units and/or imprisonment for up to 5 years; or
- without taking reasonable steps to ensure that the information was not false or misleading, breaches section 1309(2) of the Corporations Act, which is a criminal offence punishable by a fine of up to 100 penalty units and/or imprisonment for up to 2 years.⁴²

Lead managers and other professional advisers involved in a listing application who do likewise can also be liable under other provisions of the Corporations Act.⁴³

³⁶ Since the underwriting agreement is not released on the ASX Market Announcements Platform, it is particularly important that the entity's prospectus or information memorandum include a fair and accurate description and a summary of the material terms of the underwriting agreement.

³⁷ For example, under or in relation to Listing Rule 1.8, condition 1, 2 or 6 (see 1.1, 'The type of entity that can be listed' on page 10, '3.3 The type of securities that can be quoted' on page 12 and '3.10 Additional requirements for foreign entities' on page 16, respectively).

³⁸ Listing Rule 1.17.

³⁹ Listing Rule 1.17. The costs of the expert must be paid for by the applicant.

⁴⁰ Listing Rules 1.19 and 2.9.

⁴¹ This includes omitting material which renders the information given to ASX misleading in a material respect.

⁴² See for example ASIC Media Release 14-103MR announcing that a former Perth director had been sentenced to 14 months jail, with a minimum of 5 months to serve before being released on a \$5,000 recognisance requiring good behaviour for 12 months, for providing false or misleading information to ASX in connection with the conditions precedent for admission to the official list.

⁴³ See for example ASIC Media Release 08-167, announcing that ASIC had banned an individual from providing financial services for 5 years, among other things, for knowingly misleading or deceiving ASX about shareholder spread and, in so doing, misleading or deceiving investors under section 1041H of the Corporations Act. In that case, the individual had been engaged as a consultant to assist an applicant for listing that was having difficulty meeting the spread test. He subsequently sought assistance from some of his associates and instructed them to encourage others known to them to fill in application and transfer forms for shares. He paid \$100 to his associates for each completed application, a portion of which was sometimes passed onto the applicant. The individual applicants were encouraged to fill out an IPO application form without completing the payment details on the application form. They were also asked to execute pre-completed share transfer forms. The shares were then paid for from a bank account held by a director of the applicant and later transferred out of the applicants' names by way of the pre-completed transfer forms.

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It is therefore important that applicants and their officers, employees, lead managers and other professional advisers exercise appropriate care and diligence in the preparation of a listing application and supporting documents.

2.11 Continuing requirements

Once listed on ASX, an ASX Debt Listing must comply with the following Listing Rules:

- in relation to its debt securities, Listing Rules 2.1, 2.4, 2.5, 2.6, 2.7, 2.8, 2.9, 2.10, 2.14, 3.1, 3.1A, 3.1B, 3.10.3, 3.10.4, 3.10.5, 3.13.2, 3.13.3, 3.15, 3.17, 3.20, 4.11, Appendix 6A paragraphs 2 and 3, Chapter 8, 15.1.2, 15.2 to 15.10 and Chapters 16, 17, 18 and 19;⁴⁴ and
- in relation to the entity as a whole, Listing Rules 3.14, 3.16 (other than 3.16.4), 3.18, 4.7A, 4.9, 12.6, 12.6A and 12.6B.⁴⁵

ASX has the power to prescribe additional Listing Rules with which an ASX Debt Listing must comply.⁴⁶

3. Particular listing requirements

3.1 The type of entity that can be listed

For an entity to be admitted to the official list as an ASX Debt Listing, it must be:

- a public company limited by shares;
- a government borrowing authority;
- a public authority; or
- a person⁵⁸ approved by ASX.⁵⁹

An entity that falls within one of the first three categories above may be a trustee of a trust, but only if it is the issuer of the debt securities⁶⁰ and the trust is a special purpose trust constituted solely for the purpose of the issue of the class of debt securities to be listed on ASX.⁶¹ Further, if the debt securities to be quoted on ASX are retail securities, the entity must be a registered managed investment scheme or have an exemption from ASIC from that requirement.⁶²

The reference in the first category above to a public company limited by shares means a public company established in Australia.⁶³ However, ASX will entertain an application for approval under the fourth category above by a public company limited by shares established in another jurisdiction.

The references in the second and third categories above to government borrowing authorities and public authorities include all such authorities, whether they are established in Australia or elsewhere.

⁴⁴ Listing Rule 1.10.1.

⁴⁵ Listing Rule 1.10.2.

⁴⁶ Listing Rule 1.10.1 and 1.10.2. This power may be exercised before or after the entity is listed.

⁵⁸ The term "person" is defined in Listing Rule 19.12 to mean an individual, body corporate, body politic, firm, association, authority or other entity. ASX, however, will not approve an individual for admission to the official list as an ASX Debt Listing.

⁵⁹ Listing Rule 1.8 condition 2.

⁶⁰ Listing Rule 1.8 condition 8(a).

⁶¹ Listing Rule 1.8 condition 8(b).

⁶² Listing Rule 1.8 condition 8(c).

⁶³ This is because terms not defined in the Listing Rules but defined in the Corporations Act are taken to have their meaning under that Act (Listing Rule 19.3).

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Moved down [1]: ~~For these purposes, the term "debt securities" includes:~~
~~an unsecured note,⁴⁸ except one convertible to a share or unit;~~
~~a debenture,⁴⁹ except one convertible to a share or unit; and~~
~~any other security that ASX decides to classify as a debt security;~~
~~but excludes a security that ASX decides to classify as an equity security.⁵⁰~~
~~If an applicant has any concerns about whether ASX will classify the securities it is seeking to quote on ASX as debt securities or equity securities, it should discuss that issue with ASX Listings Compliance at the earliest opportunity, preferably before it goes to the~~

Deleted: ~~The type of securities that can be quoted~~
~~Under Listing Rule 1.8 Condition 1, an entity applying for admission as an ASX Debt Listing must be seeking quotation of debt securities only.⁴⁷~~

Deleted: ~~trouble and expense of submitting its application for admission as an ASX Debt Listing.~~

Moved down [2]: ~~Listing Rule 2.1 sets out the conditions that must be satisfied for the initial quotation⁵¹ of any class of debt securities issued by an entity seeking admission to the official list as an ASX Debt Listing. In summary, they are:~~
~~the aggregate face value of the securities must be at least \$10 million;⁵²~~
~~the issue or sale price of the securities must be at least 20 cents in cash;⁵³~~
~~the timetable for the payment of interest on the debt securities must comply with items 2 and 3 of Appendix 6A;⁵⁴~~
~~the entity must have satisfied any requirements of an approved clearing and settlement facility so that trades in its securities can be cleared and settled;⁵⁵ and~~
~~a copy of the document setting out the terms of the securities must have been given to ASX,⁵⁶ including any deed poll or trust deed⁵⁷ relating to the securities.~~
~~An entity applying for admission to the official list as an ASX Debt Listing may seek quotation of more than one class of debt securities. If it does so, each class will need to satisfy the requirements above.~~

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Any other type of entity must apply to ASX for approval under the fourth category above. ASX will generally require the entity to provide:

- a legal opinion from a reputable law firm in the applicant's home jurisdiction which is satisfactory to ASX and which confirms that the applicant is validly existing in that jurisdiction and that the courts of that jurisdiction will recognise the entity as a legal entity having the standing to sue or be sued; and
- a legal opinion from a reputable Australian law firm which is satisfactory to ASX and which confirms that:
 - the entity is a "body" and a "body corporate" within the meaning of section 9 of the Corporations Act;
 - the entity is a "person" for the purposes of section 793C and 1101B, Part 7.10, and Division 1 of Part 7.12 of the Corporations Act; and
 - if it is admitted to the official list, the entity will be a "listed disclosing entity" for the purposes of Chapter 6CA of the Corporations Act.

3.2 Minimum NTA or rating requirement

An entity seeking admission in the ASX Debt Listing category must satisfy at least one of the following three requirements:

- it must have net tangible assets at the time of admission of at least \$10 million or, if the entity is a trustee, the trust must have net tangible assets of at least \$10 million;⁶⁴
- the debt securities for which the entity seeks quotation must be unconditionally and irrevocably guaranteed for the period of quotation by a guarantor that is a company which at the time of admission of the entity has net tangible assets of at least \$10 million and that has provided an undertaking to provide to ASX for release to the market the documents required to enable the entity to comply with Listing Rule 4.7A.1;⁶⁵ or
- the debt securities for which the entity seeks quotation must be rated at least "investment grade" by one of Moody's Investor Services Inc., Standard & Poors, Inc., Fitch, Inc. or any other credit rating agency advised to the market by ASX from time to time for these purposes (or any of their subsidiaries) and none of those credit rating agencies has issued a rating less than "investment grade" in relation to those debt securities.⁶⁶

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An applicant in the first category above must give ASX its accounts, together with any audit report or review, for the last 2 full financial years (or a shorter period if ASX agrees).⁶⁷

The guarantor of an applicant in the second category must also give ASX its accounts, together with any audit report or review, for the last 2 full financial years (or a shorter period if ASX agrees).⁶⁸

An applicant in the third category above must give ASX evidence that it has received the required "investment grade" rating from one of the nominated credit rating agencies and confirm in writing to ASX that, as far as it is aware, no credit rating agency (whether it is one of the nominated credit rating agencies or otherwise) has issued a rating less than "investment grade" in relation to the debt securities to be quoted.

⁶⁴ Listing Rule 1.8 condition 3(a).

⁶⁵ Listing Rule 1.8 condition 3(b). Listing Rule 4.7.1A applies where an ASX Debt Issuer was admitted on the basis of a guarantee provided by a parent entity. Under that rule, where the parent entity is required to comply with section 601CK of the Corporations Act, the ASX Debt Issuer must give ASX a copy of the documents that the parent entity lodges with the ASIC under the Corporations Act no later than the time that the parent entity lodges them. If the parent entity is not required to comply with section 601CK of the Corporations Act, the ASX Debt Issuer must give to ASX, in English, a copy of any annual accounts that the parent entity lodges with the regulatory authorities in the jurisdiction in which it is established, immediately after the parent entity lodges them.

⁶⁶ Listing Rule 1.8 condition 3(c).

⁶⁷ If its accounts have not been audited or reviewed, the entity must tell ASX.

⁶⁸ If the guarantor's accounts have not been audited or reviewed, the guarantor must tell ASX.

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Where an applicant in the third category is offering retail securities under a prospectus, ASX expects the prospectus to include not only the details of the rating, but also an explanation of the rating and its significance in the context of other ratings.⁶⁹

3.3 The type of securities that can be quoted

An entity applying for admission as an ASX Debt Listing must be seeking quotation of debt securities only and ASX must also be satisfied that the debt securities to be quoted are "financial products," as defined in the Corporations Act.⁷³

For these purposes, the term "debt securities" includes:

- an unsecured note,⁷⁴ except one convertible to a share or unit;
- a debenture,⁷⁵ except one convertible to a share or unit; and
- any other security that ASX decides to classify as a debt security.

but excludes a security that ASX decides to classify as an equity security.⁷⁶

If an applicant has any concerns about whether ASX will classify the securities it is seeking to quote on ASX as debt securities or equity securities, it should discuss that issue with ASX Listings Compliance at the earliest opportunity, preferably before it goes to the effort and expense of submitting its application for admission as an ASX Debt Listing.

In most cases, it will be reasonably clear that the debt securities to be quoted are "financial products" as defined in the Corporations Act. However, if ASX has any doubt on this score, it may require the applicant to provide a legal opinion from a reputable Australian law firm which is satisfactory to ASX and which confirms that the debt securities to be quoted are "financial products" as defined in the Corporations Act.

⁶⁹ See the explanatory note to Listing Rule 1.8 condition 3. This could be done, for example, by including a comparative table, with brief descriptions of each category of rating.

⁷³ Listing Rule 1.8 condition 1. An entity wishing to apply for quotation of equity securities should apply for admission to the official list as an ASX Listing or, if it qualifies, as an ASX Foreign Exempt Listing.

⁷⁴ The term "unsecured note" is not defined in the Listing Rules or in the Corporations Act. In part, it was intended to capture an undertaking to pay money under a promissory note that had a face value of at least \$50,000, when these types of instruments were excluded from the definition of "debenture" in section 9 of the Corporations Act. That exclusion (paragraph (d) of the definition) was repealed by the Corporations Legislation Amendment (Financial Services Modernisation) Act 2009. The end result is that such notes now clearly fall within the definition of "debenture" and so the reference to "unsecured notes" in the definition of "debt securities" in the Listing Rules is now redundant on this score.

The dichotomy between unsecured notes and debentures in the definition of "debt securities" is now best understood as referring to the naming conventions imposed by section 283BH of the Corporations Act (see '4.4 Naming restrictions' on page 21).

⁷⁵ The term "debenture" has the same meaning as in the Corporations Act (see Listing Rule 19.3). Section 9 of that Act defines "debenture of a body" to mean (subject to certain exclusions) a chose in action that includes an undertaking by the body to repay as a debt money deposited with or lent to the body. The chose in action may (but need not) include a charge over property of the body to secure repayment of the money. The term excludes (a) an undertaking to repay money deposited with or lent to the body by a person if: (i) the person deposits or lends the money in the ordinary course of a business carried on by the person; and (ii) the body receives the money in the ordinary course of carrying on a business that neither comprises nor forms part of a business of borrowing money and providing finance; (b) an undertaking by an Australian ADI to repay money deposited with it, or lent to it, in the ordinary course of its banking business; (c) an undertaking to pay money under a cheque, order for the payment of money or bill of exchange; (e) an undertaking by a body corporate to pay money to a related body corporate; and (f) an undertaking to repay money that is prescribed by the regulations. Note that the exclusion in paragraph (d) of that definition was repealed by the Corporations Legislation Amendment (Financial Services Modernisation) Act 2009 (see note 74 above).

⁷⁶ Listing Rule 19.12.

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Deleted: ~~Examples of where issues can arise under Listing Rule 1.8 condition 3(d) include:~~

Moved down [4]: ~~where the securities are considered too complex for the average retail investor to understand (which may be the case, for example, for some of the more sophisticated collateralised debt obligations on offer in wholesale markets); and~~
~~where the applicant has used a name or description for its debt securities that does not conform to the naming conventions set out in Guidance Note 34 Naming Conventions for Debt and Hybrid Securities.⁷¹~~

Moved down [5]: Additional requirements for foreign entities

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~~it must appoint~~

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~~if the debt securities it wishes to quote on ASX are certificated, it must establish in Australia an Australian securities register or subregister to facilitate the transfer~~

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Deleted: ~~applicant complies with its constitution and the laws that govern it, and the listing rules (or their equivalent) of its overseas home exchange (if any); and~~
~~ASX must be satisfied that the~~

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~~To satisfy the fourth requirement above, ASX will require a legal opinion from a reputable law firm in the applicant's home jurisdiction which is satisfactory to ASX and which confirms that the applicant is validly existing in that jurisdiction and that the business it carries on complies with its constitution, the laws of that jurisdiction and, if it is listed on an overseas stock exchange, the listing rules (or their equivalent) of that exchange.~~

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3.4 Requirements for quotation

Listing Rule 2.1 sets out the conditions that must be satisfied for the initial quotation⁷⁹ of any class of debt securities issued by an entity seeking admission to the official list as an ASX Debt Listing. In summary, they are:

- the aggregate face value of the securities must be at least \$10 million;⁸⁰
- the issue or sale price of the securities must be at least 20 cents in cash;⁸¹
- the timetable for the payment of interest on the debt securities must comply with items 2 and 3 of Appendix 6A;⁸²
- the entity must have satisfied any requirements of an approved clearing and settlement facility so that trades in its securities can be cleared and settled;⁸³ and
- a copy of the document setting out the terms of the securities must have been given to ASX,⁸⁴ including any deed poll or trust deed⁸⁵ relating to the securities.

An entity applying for admission to the official list as an ASX Debt Listing may seek quotation of more than one class of debt securities. If it does so, each class will need to satisfy the requirements above.

3.5 Number of securities to be quoted

An entity seeking admission in the ASX Debt Listing category to apply for and be granted permission for quotation of all of the securities that are in the class for which it seeks quotation.⁸⁶

As a practical matter, at the time an entity applies to ASX for admission to the official list, it may not know the precise number of securities in any particular class that are to be quoted. For example, an entity offering securities by way of a prospectus may include a provision allowing it to accept over-subscriptions and may not know the level of over-subscriptions it will receive and accept.

To meet this requirement and to avoid the legal difficulties that might otherwise arise under section 723(3) of the Corporations Act,⁸⁷ an entity should apply for quotation of, and pay the initial listing fee⁸⁸ for, the maximum number of securities that can be quoted. Hence, if the entity's prospectus allows acceptance of over-subscriptions, the number of securities for which quotation is sought in the application should include the maximum amount of over-subscriptions that can be accepted.

⁷⁹ Note that Listing Rule 2.1 only applies to the initial quotation of the entity's main class of securities at listing. Once that class has been quoted, if the entity makes any further issue of securities of that class, it must apply to have them quoted under Listing Rule 2.4 and pay the subsequent listing fees for the quotation of additional equity securities under Listing Rule 16.4. However, it does not have to re-comply with Listing Rule 2.1 in relation to that further issue. Accordingly, there is no minimum aggregate face value amount or minimum issue price or sale price applicable to a further issue of securities in its main class that takes place after listing.

⁸⁰ Listing Rule 2.1 condition 6.

⁸¹ Listing Rule 2.1 condition 2.

⁸² Listing Rule 2.1 condition 1 and Listing Rule 6.24. In this regard, it should be noted that while Listing Rule 2.1 condition 1 requires the terms of the applicant's securities to comply generally with Chapter 6 of the Listing Rules, the only requirement in Chapter 6 of the Listing Rules that applies to debt securities is the requirement in Listing Rule 6.24 for the entity to comply with the timetable for interest payments in Appendix 6A.

⁸³ Listing Rule 2.1 condition 3. See '3.11 Clearing and settlement' on page 16.

⁸⁴ Listing Rule 2.1 condition 5.

⁸⁵ Under the Corporations Act, a trust deed may be required for certain retail debt securities: see '4.2 The requirement for a trust deed' on page 19.

⁸⁶ Listing Rule 1.8 condition 5.

⁸⁷ See '2.5 Corporations Act deadlines for lodgement' on page 5.

⁸⁸ See '2.6 Payment of initial listing fee' on page 6.

Deleted: It should be noted that ASX will only entertain an application for a waiver from the requirement for the applicant to be registered as a foreign company under the Corporations Act, if it provides a legal opinion from a reputable Australian law firm which is satisfactory to ASX and which confirms that the applicant will not be "carrying on business" in Australia for the purposes of section 601CD of the Corporations Act.⁷⁹

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3.6 Appropriate structure and terms for retail securities

If an applicant is seeking to quote retail securities, both its structure and the terms of the debt securities must be appropriate for retail securities.⁸⁹

Examples of where issues can arise in this regard include:

- where the securities are considered too complex for the average retail investor to understand (which may be the case, for example, for some of the more sophisticated collateralised debt obligations on offer in wholesale markets); and
- where the applicant has used a name or description for its debt securities that does not conform to the naming conventions set out in Guidance Note 34 *Naming Conventions for Debt and Hybrid Securities*.⁹⁰

3.7 Person responsible for communications

An entity seeking admission in the ASX *Debt* Listing category must appoint at least one person⁹² to be responsible⁹³ for communication with ASX in relation to Listing Rule matters.⁹⁴ The person appointed must be able to communicate in English.

From time to time, ASX may need to discuss with a listed entity pressing matters (particularly, but not only, disclosure matters) under the Listing Rules. To facilitate this, it is important that the person (or each of the persons) appointed to be responsible for communications with ASX in relation to Listing Rule matters:

- has the organisational knowledge to have meaningful discussions on Listing Rule matters;
- can request a trading halt and issue an announcement to the market, if that is what is required,⁹⁵

and that person (or at least one of those persons) is readily contactable by ASX by telephone during normal market hours and for at least one hour either side thereof (ie, from 9am to 5pm Sydney time) on each day that ASX is trading.⁹⁶

This requires that the person has a high degree of familiarity with the listed entity's operations and, if they are not a member of senior management, that they have immediate access to senior management. It also requires them

⁸⁹ Listing Rule 1.8 condition 4. In assessing whether this requirement is met, ASX has regard to the principles on which the Listing Rules are based, as set out in the introduction to the Listing Rules. One of those principles is that securities "should have rights and obligations attaching to them that are fair to new and existing security holders".

⁹⁰ See '4.5 Other naming conventions' on page 22.

⁹² An entity may appoint more than one person to be responsible for communications with ASX, to cater for one of its contacts being absent or on leave.

⁹³ The fact that the person so appointed is said to be "responsible" for communication with ASX in relation to Listing Rule matters does not in any way diminish the responsibility of the listed entity to communicate to ASX any information required under the Listing Rules.

⁹⁴ Listing Rule 1.8 condition 10. The Information Form and Checklist that must accompany an Appendix 1B application for listing requires the applicant to disclose the name, address and contact details of the person or persons responsible for communication with ASX in relation to Listing Rule matters.

⁹⁵ ASX acknowledges that the decision to request a trading halt is a serious one and that a listed entity will often have approval processes that need to be followed before a person appointed under Listing Rule 12.6 to be responsible for communications with ASX in relation to Listing Rule matters will have the authority to request a trading halt. For example, many entities typically require such a request to be approved by the chairperson and/or the CEO. If an entity has such approval processes in place, they must be able to be activated and any necessary approvals obtained within a matter of minutes. They should also include appropriate contingencies for when key approvers are not available. As noted in the text, where there is a time critical continuous disclosure issue and a trading halt is warranted, any delay in requesting the trading halt could result in ASX being left with little choice but to suspend the quotation of the entity's securities. It could also result in regulatory action by ASIC (see ASIC Media Release 08-117).

⁹⁶ This requires the nominated representative to be available to take calls from ASX, if they are based in Western Australia, from as early as 6am (WA time) during summer time and 7am (WA time) at other times and, if they are based in New Zealand, until as late as 7pm (NZ time). They must also be available to take calls from ASX on trading days that fall on a public holiday where they live and make suitable arrangements to cover any absences due to illness or while they are on leave.

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to provide ASX with a mobile phone number to contact them and that they keep their mobile phone switched on at all times from 9am to 5pm Sydney time on each trading day.

The need to resolve a disclosure issue under the Listing Rules can be extremely time critical. Where such an issue arises, if ASX is not able to contact an entity's nominated representative on Listing Rule matters, or the representative does not have the organisational knowledge or authority to address the issue promptly, ASX may be left with little option but to suspend the quotation of the entity's securities until the issue can be properly resolved.

Typically, a company secretary would be an appropriate person to be responsible for communications with ASX.

3.8 Electronic lodgement facilities

An entity seeking admission in the ASX Debt Listing category **must** agree with ASX, in writing, that documents may be given to ASX and authenticated electronically and to establish the facilities required for the entity to give documents to ASX electronically.⁹⁷

In practice, this requirement is met by the entity executing an *Application and agreement for use of electronic lodgement facility and entity details facility* (ASX Online Agreement) in the form set out in the attachment to Guidance Note 20. An editable version of the ASX Online Agreement can be downloaded from <http://www.asx.com.au/regulation/compliance/compliance-downloads.htm>. These are standard form agreements and ASX will not agree to any changes. Hence, any edits to the ASX Online Agreement should be confined to inserting the date of the agreement and the details of, and an appropriate execution clause for, the applicant.

A signed copy of the ASX Online Agreement, duly executed by the applicant, should accompany its listing application.

Further guidance on the use of ASX's electronic lodgement facilities can be found in Guidance Note 20 *ASX Online*.

3.9 Additional requirements for asset-backed securities

Where an applicant is seeking quotation of asset-backed securities:⁹⁸

- it must have appointed a security trustee or other independent person to represent the interests of the holders of asset-backed securities;⁹⁹ and
- where the asset-backed securities are secured against equity securities, or options, warrants, or other rights relating to equity securities, the equity securities must be quoted on a stock exchange or traded on another regulated market and must not constitute a majority interest or confer legal or management control of the companies that have issued them.¹⁰⁰

If the applicant proposes to satisfy the first of these conditions by appointing someone other than a security trustee, it should contact ASX Listings Compliance at the earliest opportunity to discuss whether the appointed party will be considered by ASX to be independent and otherwise appropriate to represent the interests of the holders of asset-backed securities.

Similarly, where the asset-backed securities are secured against equity securities, or options, warrants, or other rights relating to equity securities, and the relevant equity securities are not quoted on a recognised stock exchange, the applicant should contact ASX Listings Compliance at the earliest opportunity to discuss whether the equity

⁹⁷ Listing Rule 1.8 condition 11.

⁹⁸ "Asset-backed securities" are defined in Listing Rule 19.12 to mean debt securities backed by assets which, at the time of their issue, are evidenced by agreements and intended to produce funds to be applied towards interest payments due on the securities or repayment of principal on maturity. They also include "property-backed securities", which are defined in Listing Rule 19.12 to mean debt securities which are directly secured, in whole or in part, over real property or other tangible assets.

⁹⁹ Listing Rule 1.8 condition 13(a).

¹⁰⁰ Listing Rule 1.8 condition 13(b).

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securities are traded on a market that is regarded by ASX as a “regulated market” for the purposes of the second of these conditions.

3.10 Additional requirements for foreign entities

If the applicant is a foreign entity,¹⁰¹ ASX must be satisfied that it complies with its constitution and the laws that govern it, and the listing rules (or their equivalent) of its overseas home exchange (if any).¹⁰²

To satisfy this requirement, ASX will usually require a legal opinion from a reputable law firm in the applicant’s home jurisdiction which is satisfactory to ASX and which confirms that the applicant is validly existing in that jurisdiction and that the business it carries on complies with its constitution, the laws of that jurisdiction and, if it is listed on an overseas stock exchange, the listing rules (or their equivalent) of that exchange.

If the applicant is a foreign company,¹⁰³ it must be registered as a foreign company carrying on business in Australia under the Corporations Act.¹⁰⁴

If the applicant is a foreign trust,¹⁰⁵ its responsible entity¹⁰⁶ must either be an Australian company or registered as a foreign company carrying on business in Australia under the Corporations Act.¹⁰⁷

Guidance Note 4 *Foreign Entities Listing on ASX* has further guidance on the requirements to register as a foreign company carrying on business in Australia under the Corporations Act.

Where a foreign entity is offering retail securities under a prospectus, ASX expects the prospectus to include:¹⁰⁸

- a statement of its place of incorporation or registration; and
- a statement to the effect that:

“As [*name of entity*] is not established in Australia, its general corporate activities (apart from any offering of securities in Australia) are not regulated by the Corporations Act 2001 of the Commonwealth of Australia or by the Australian Securities and Investments Commission but instead are regulated by [*insert name of governing legislation*] and [*insert name of corporate regulator administering that legislation*].”

3.11 Clearing and settlement

Trades in debt securities quoted on the ASX market¹⁰⁹ are cleared and settled through an electronic system called CHES (Clearing House Electronic Subregister System). CHES facilitates the paperless transfer of ownership to ASX quoted securities through an electronic subregister system.

Under the CHES system, a listed entity’s principal register of securities is effectively made up of two electronic uncertificated subregisters – a “CHES subregister” maintained by ASX Settlement¹¹⁰ and an “issuer sponsored

¹⁰¹ “Foreign entity” means a foreign company or foreign trust (see Listing Rule 19.12). The definitions of “foreign company” and “foreign trust” are set out in notes 103 and 105 below.

¹⁰² Listing Rule 1.8 condition 6.

¹⁰³ “Foreign company” means a body corporate that is not formed or established in Australia (see Listing Rule 19.12).

¹⁰⁴ Listing Rule 1.8 condition 7.

¹⁰⁵ “Foreign trust” means a trust or similar overseas entity that is not formed or established in Australia and that is not a registered managed investment scheme under the Corporations Act (see Listing Rule 19.12).

¹⁰⁶ “Responsible entity” means: (a) in relation to a managed investment scheme registered under the Corporations Act, the responsible entity of that scheme under that Act; (b) in relation to a trust that is not a registered managed investment scheme, the entity that in ASX’s opinion performs a substantially equivalent role in relation to the trust as the responsible entity performs in relation to a registered managed investment scheme (see Listing Rule 19.12).

¹⁰⁷ Listing Rule 1.8 condition 8(d).

¹⁰⁸ See also Guidance Note 4 *Foreign Entities Listing on ASX*.

¹⁰⁹ This section does not apply to wholesale securities quoted on ASX’s wholesale loan securities market. These are traded off-market and settled through the Austraclear system.

¹¹⁰ ASX Settlement Pty Limited, a wholly owned subsidiary of ASX and the operator of the ASX Settlement facility.

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subregister” maintained by the issuer. Persons holding securities in the entity have the option to register their securities on either subregister.¹¹¹

Unless it is established in an overseas jurisdiction whose laws preclude this, an entity seeking an ASX Debt Listing must be approved as an issuer under the operating rules¹¹² of the CHES facility¹¹³ and also have the debt securities it is seeking to have quoted approved for participation in that facility.¹¹⁴ Once these approvals have been obtained, ASX Settlement will then establish the CHES subregister for its debt securities.¹¹⁵ The entity must establish its own issuer sponsored subregister for its debt securities.¹¹⁶ In practice, this will usually require it to engage a share registry to administer the issuer sponsored subregister on its behalf.

If the entity is established in an overseas jurisdiction whose laws have the effect that CHES cannot be used for holding legal title to its securities, to allow ASX to clear and settle transactions in its securities, the entity must have CHES Depository Interests, or CDIs, issued over its ASX quoted debt securities and establish a CHES subregister and issuer sponsored subregister in those CDIs.¹¹⁸ To do the first of these, the entity must be approved as a foreign issuer of CDIs under the operating rules of the CHES facility¹¹⁹ and also have the CDIs to be issued over its debt securities approved for participation in that facility.¹²⁰ Once these approvals have been obtained, ASX Settlement will then establish the CHES subregister for its CDIs. The entity must establish its own issuer sponsored subregister for its CDIs.¹²¹ Again, in practice, this will usually require it to engage a share registry to administer the issuer sponsored subregister on its behalf.

An entity's Appendix 1B application form not only operates as an application to be admitted to the official list of ASX but also as an application by the entity for the requisite approvals under the operating rules of the CHES facility.¹²⁴

4. Particular Corporations Act requirements for retail securities

4.1 The requirement for a prospectus

An entity seeking admission as an ASX Debt Listing in relation to retail securities will generally need to issue a prospectus in relation to those securities and lodge it with ASIC.¹²⁵ If it does, a copy of the prospectus, as lodged

¹¹¹ To register securities on the CHES subregister, a person must have a sponsorship agreement with a participant in the ASX Settlement facility. Registering securities on the CHES subregister effectively gives the sponsoring participant control of the holdings for the purposes of settlement.

¹¹² References to the operating rules of the CHES facility mean the ASX Settlement Operating Rules.

¹¹³ Listing Rule 1.8 condition 12(a).

¹¹⁴ Listing Rule 2.1 condition 3(a) and ASX Settlement Operating Rule 8.1.1. Once its securities have been approved for participation in the CHES system, an entity must continue to comply with the operating rules for that system in relation to its quoted securities (Listing Rule 8.1).

¹¹⁵ Pursuant to ASX Settlement Operating Rules 8.1.3, 8.6.1 and 8.6.2.

¹¹⁶ Listing Rule 8.2.

¹¹⁸ Listing Rule 8.2 and ASX Settlement Operating Rule 13.5.4. CDIs are a type of depository receipt that allow investors to obtain all the economic benefits of owning securities without actually holding legal title to them. They were developed by ASX to facilitate the clearing and settlement of transactions in securities through CHES where the transfer of legal title to the securities themselves is not able to be effected through CHES. For further guidance on CDIs, see Guidance Note 5 *CHES Depository Interests (CDIs)*.

¹¹⁹ Listing Rule 1.8 condition 12(b).

¹²⁰ Listing Rule 2.1 condition 3(b) and ASX Settlement Operating Rule 13.2.1.

¹²¹ Listing Rule 8.2.

¹²⁴ ASX Settlement Operating Rule 8.1.1 and Procedure 8.1.1.

¹²⁵ Generally, this will be because the entity is intending to make an offer of debt securities for issue to investors in Australia that will require a prospectus under sections 700 and 706 of the Corporations Act. Any offer of securities in advance of, or in conjunction with, a listing on ASX – even where the offers are confined to investors outside Australia or are limited to investors in Australia who would not otherwise have to be given a prospectus under section 708 (for example, sophisticated investors under section 708(8) or professional investors under section 708(11)) – will usually attract section 707(3) and therefore, as a practical matter, require the production of a prospectus under section 708A. Any entity that is seeking admission as an ASX Debt Listing in relation to retail securities and that is not intending to lodge a prospectus with ASIC will need to satisfy ASX that a prospectus is not required under the Corporations Act, either in connection with the primary issue of those securities or the secondary sale of those securities on ASX.

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Deleted: An entity established in an overseas jurisdiction can only have a certificated register for ASX quoted securities¹²² if the laws where it is established prohibit its securities being held on an uncertificated issuer sponsored subregister.¹²³

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with ASIC, must accompany the Information Form and Checklist that the entity lodges with its Appendix 1B application for listing.¹²⁶

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A copy of the applicant's prospectus will be released to the market via the ASX Market Announcements Platform ahead of the listing decision, after the applicant has been set up in ASX's systems with an appropriate code and entity details.¹²⁷ This is to facilitate both the primary offering of the securities ahead of quotation and also to help ensure that there is an informed secondary market in the securities if and when quotation commences.

The abridged two-part prospectus regime for simple corporate bonds provided for in sections 713B-713D of the Corporations Act only applies to an entity that either:

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- has continuously quoted securities; or
- is a wholly-owned subsidiary of a body corporate that has continuously quoted securities and that has guaranteed or agreed to guarantee the payment of the principal and interest due on the bonds in question.¹²⁸

It is therefore unlikely to be available to an entity proposing to list on ASX for the first time as an ASX Debt Listing, unless that entity is:

- already listed on another licensed exchange in Australia; or
- a wholly-owned subsidiary of another entity that is already listed on ASX or on another licensed exchange in Australia and that has guaranteed or agreed to guarantee the payment of the principal and interest due on the entity's bonds.

The Corporations Act generally requires a prospectus for securities (other than a two-part prospectus for simple corporate bonds¹²⁹) to set out all the information that investors and their professional advisers would reasonably require, and reasonably expect to find in the prospectus, to make an informed assessment of the rights and liabilities attaching to the securities and of the issuer's assets and liabilities, financial position and performance, profits and losses and prospects.¹³⁰ The Corporations Act also imposes significant liabilities on the issuer of a prospectus if the prospectus omits such information or is otherwise misleading or deceptive.¹³¹

ASX would observe that much of the information referred to in the Information Form and Checklist (ASX Debt Listings) that must accompany an Appendix 1B application for listing would typically be included in the applicant's listing prospectus, on the basis that this is material information for investors.

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An entity warrants in its Appendix 1B ASX Debt Listing application and agreement that an offer for sale of the securities to be quoted within 12 months after their issue will not require disclosure under section 707(3) of the Corporations Act and indemnifies ASX to the fullest extent permitted by law in respect of any claim, action or expense arising from, or connected with, any breach of that warranty.

¹²⁶ An applicant seeking admission as an ASX Debt Listing in relation to retail securities must provide an electronic version and 25 hard copies of its prospectus as one of the required attachments to the Information Form and Checklist accompanying its Appendix 1B listing application.

¹²⁷ The fact that ASX enters an entity's details into its systems and releases a copy of its prospectus on the Market Announcements Platform does not constitute approval of the entity's application to be admitted to the official list or any express or implied endorsement by ASX of its prospectus. ASX may still refuse the application notwithstanding it has taken these steps and, if it has any concerns about the quality of the information in the entity's prospectus, it may still raise those concerns with ASIC, as the regulator responsible for administering the laws relating to prospectuses, and discuss with ASIC whether the applicant should be required to lodge a supplementary or replacement prospectus to address those concerns (see note ¹³⁷ and the accompanying text).

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¹²⁸ Sections 713A(17) and (18) of the Corporations Act.

¹²⁹ A two-part prospectus for simple corporate bonds is excluded from the operation of sections 710(1) and (2) of the Corporations Act by section 710(4). In the case of a two-part prospectus for simple corporate bonds, the base prospectus must meet the content requirements in section 713C of the Corporations Act and regulation 6D.2.04 of the Corporations Regulations and the offer-specific prospectus must meet the content requirements in section 713D of the Corporations Act and regulation 6D.2.05 of the Corporations Regulations.

¹³⁰ Corporations Act sections 710(1) and (2).

¹³¹ See sections 728 and 729 of the Corporations Act. In the case of a prospectus for debt securities other than simple corporate bonds, liability can also extend to the directors and proposed directors of the issuer, as well as certain other parties named with their consent in the prospectus (see section 729(1)). In the case of prospectus for simple corporate bonds, liability can also extend to certain other parties named with their consent in the prospectus (see section 729(1) and (1A)).

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There is also some limited guidance in this Guidance Note on additional matters that ASX considers ought to be disclosed in a listing prospectus for an ASX Debt Listing.¹³³

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It is the responsibility of the applicant and its professional advisers to determine what information must be included in its prospectus, having regard to their disclosure obligations and liabilities under the Corporations Act.¹³⁴

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If requested by an applicant, ASX will review and provide comments on an extract from a draft prospectus that raises particular Listing Rule issues. Beyond that, ASX will not pre-vet or provide comments on a draft prospectus ahead of its lodgement with ASIC.

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ASX will review the final version of the applicant's prospectus lodged with ASIC and, if it has any concerns about the quality of the information in the prospectus, it may raise those concerns with ASIC, as the regulator responsible for administering the laws relating to prospectuses, and discuss with ASIC whether the applicant should be required to lodge a supplementary or replacement prospectus to address those concerns.¹³⁷ It may also take those concerns into account in determining whether or not it will admit the applicant to the official list.¹³⁸

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in the case of an entity seeking to be admitted under Listing Rule 1.8 condition 3 (investment grade credit rating), ASX expects the applicant's prospectus to include not only the details of the rating, but also an explanation of the rating and its significance in the context of other ratings;¹³⁵ and
in the case of an entity established outside Australia, ASX expects the applicant's prospectus to include:¹³⁶

If the applicant issues a supplementary or replacement prospectus, it should provide a copy to ASX as soon as it is issued. If the changes in the supplementary or replacement prospectus are material, ASX may require the applicant to provide an updated Information Form and Checklist (ASX Debt Listings) that cross-references the new document.

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a statement to the effect that:
"As [name of entity] is not established in Australia, its general corporate activities (apart from any offering of securities in Australia) are not regulated by the Corporations Act 2001 of the Commonwealth of Australia or by the Australian Securities and Investments Commission but instead are regulated by [insert name of governing legislation] and [insert name of corporate regulator administering that legislation]."¹

4.2 The requirement for a trust deed

An entity seeking admission as an ASX Debt Listing in relation to retail securities will generally be required under section 283AA of the Corporations Act to enter into a trust deed that complies with section 283AB, and to appoint a trustee that complies with section 283AC, of that Act.¹³⁹

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The trust deed must provide that:

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- the right to enforce the borrower's duty to repay;
- any charge or security for repayment; and
- the right to enforce any other duties that the borrower and any guarantor have under the terms of the debentures or the provisions of the trust deed or Chapter 2 of the Corporations Act,

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are held in trust by the trustee for the benefit of the debenture holders.¹⁴⁰

The trustee must be:

¹³³ See, for example, '3.2 Minimum NTA or rating requirement' on page 11 (investment rating) and '3.10 Additional requirements for foreign entities' on page 16 (foreign entities).

¹³⁴ Applicants for listing should note the guidance provided by ASIC in relation to prospectuses in ASIC Regulatory Guides 254 *Offering Securities under a Disclosure Document* and 228 *Prospectuses: Effective disclosure for retail investors (RG 228)*.

¹³⁷ ASX has an obligation to refer any suspected significant contravention of the Corporations Act to ASIC under section 792B(2)(c) of that Act.

¹³⁸ Pursuant to its general discretion in that regard under Listing Rule 1.19.

¹³⁹ The obligations to enter into a trust deed and appoint a trustee apply to a body that: (a) makes an offer of debentures in Australia that needs disclosure to investors under Chapter 6D, or does not need disclosure to investors under Chapter 6D because of section 708(14) (disclosure document exclusion for debenture roll overs) or section 708A (sale offers that do not need disclosure); (b) makes an offer of debentures in Australia or elsewhere as consideration for the acquisition of securities under an off-market takeover bid; or (c) issues debentures in Australia or elsewhere under a compromise or arrangement under Part 5.1 approved at a meeting held as a result of an order under section 411(1) or (1A) (section 283AA(1)). Any entity that is seeking admission as an ASX Debt Listing in relation to retail securities and that is not intending to enter into a trust deed that complies with section 283AB, and/or to appoint a trustee that complies with section 283AC, of the Corporations Act will need to satisfy ASX that this is not required to do so under section 283AA of the Corporations Act.

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¹⁴⁰ Section 283AB(1).

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- the Public Trustee of any State or Territory;
- a licensed trustee company under the Corporations Act;
- a body corporate authorised by a law of any State or Territory to take in its own name a grant of probate of the will, or letters of administration of the estate, of a deceased person;
- a body corporate registered under section 21 of the Life Insurance Act 1995;
- an Australian ADI;
- a body corporate, all of whose shares are held beneficially by a body corporate or bodies corporate of the kind referred to in the preceding four bullet points above provided that body or those bodies: (a) are liable for all of the liabilities incurred, or to be incurred, by the trustee as trustee; or (b) have subscribed for and beneficially hold shares in the trustee and there is an uncalled liability of at least \$500,000 in respect of those shares that can only be called up if the trustee becomes an externally-administered body corporate; or
- a body corporate approved by ASIC under section 283GB.¹⁴¹

Section 283AA(4) of the Corporations Act contemplates that an issuer may be exempted by the regulations from the obligation to comply with that section. The government has foreshadowed that it will adopt regulations under that section exempting the issuers of simple corporate bonds from section 283AA.¹⁴²

4.3 Obligations imposed on the borrower

A borrower that is required to enter into a trust deed under section 283AA of the Corporations Act has various duties imposed by the Corporations Act, including:

- to carry on and conduct its business in a proper and efficient manner;¹⁴³
- to provide a copy of the trust deed to a debenture holder or the trustee if they request a copy;¹⁴⁴
- to make all of its financial and other records available for inspection by the trustee, an officer or employee of the trustee authorised by the trustee to carry out the inspection or a registered company auditor appointed by the trustee to carry out the inspection and give them any information, explanations or other assistance that they require about matters relating to those records;¹⁴⁵
- to notify ASIC within 14 days of the appointment or any change in the details of the trustee;¹⁴⁶
- to replace the trustee in certain circumstances;¹⁴⁷
- to give to the trustee written details of any security interest it creates within 21 days of creating it and, if the total amount to be advanced on the security of the security interest is indeterminate and the advances are

¹⁴¹ Section 283AC(1). A person may only be appointed or act as trustee if the appointment or acting will not result in a conflict of interest or duty (section 283AC(2)).

¹⁴² See clause 1.25 of the Explanatory Memorandum for the Corporations Amendment (Simple Corporate Bonds and Other Measures) Bill 2014.

¹⁴³ Section 283BB(a). A guarantor of the borrower has a similar duty under section 283CB(a).

¹⁴⁴ Section 283BB(b).

¹⁴⁵ Section 283BB(c). A guarantor of the borrower has a similar duty under section 283CB(b).

¹⁴⁶ Section 283BC.

¹⁴⁷ Section 283BD.

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not merged in a current account with bankers, trade creditors or anyone else, to give the trustee written details of the amount of each advance within 7 days after it is made;¹⁴⁸

- to give quarterly reports to the trustee and to ASIC setting out certain details;¹⁴⁹ and
- to call a meeting of debenture holders in certain circumstances.¹⁵⁰

4.4 Naming restrictions

A borrower that is required to enter into a trust deed under section 283AA of the Corporations Act must comply with the naming restrictions for debentures set out in section 283BH of the Corporations Act.¹⁵¹ These naming restrictions apply to any description or reference to the borrower's debt securities in:

- any disclosure in relation to the offer of the debt securities;
- any other document constituting or relating to the offer of the debt securities; and
- the debt securities themselves.¹⁵²

Under the naming restrictions, the borrower may only describe or refer to its debt securities as "mortgage debentures" if:

- the repayment of all money that has been, or may be, deposited or lent under the debentures is secured by a first mortgage given to the trustee over land vested in the borrower or in any of the guarantors;
- the mortgage has been registered, or is a registrable mortgage that has been lodged for registration, in accordance with the law relating to the registration of mortgages of land in the place where the land is situated; and
- the total amount of that money and of all other liabilities (if any) secured by the mortgage of that land ranking equally with the liability to repay that money does not exceed 60% of the value of the borrower's or guarantor's interest in that land as shown in the valuation included in the disclosure document for the debentures.¹⁵³

The borrower may only describe or refer to its debt securities as "debentures" if they meet the requirements to call them "mortgage debentures" above or if:

- the repayment of all money that has been, or may be, deposited or lent under the debentures has been secured by a security interest in favour of the trustee over the whole or any part of the tangible property of the borrower or of any of the guarantors; and
- the tangible property that constitutes the security for the security interest is sufficient and is reasonably likely to be sufficient to meet the liability for the repayment of all such money and all other liabilities that have been or may be incurred and rank in priority to, or equally with, that liability.¹⁵⁴

¹⁴⁸ Section 283BE. A guarantor of the borrower has a similar duty under section 283CC.

¹⁴⁹ Section 283BF.

¹⁵⁰ Section 283EA.

¹⁵¹ These naming restrictions apply to any borrower who is required to enter into a trust deed under section 283AA: see note 139 above.

¹⁵² Section 283BH(1).

¹⁵³ Section 283BH(2)(a).

¹⁵⁴ Sections 283BH(2)(b) and (3).



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Otherwise the borrower must refer to its debt securities as “unsecured notes” or “unsecured deposit notes”.¹⁵⁵

4.5 Other naming conventions

In addition to the naming restrictions for debentures in the Corporations Act, an entity seeking admission as an ASX Debt Listing in relation to retail debt securities must describe its securities in a manner that clearly and succinctly conveys the core features of the debt securities and that is not potentially misleading (including by omission) to retail investors.¹⁵⁶

To that end, ASX has agreed with ASIC to adopt and apply certain naming conventions for debt securities. These naming conventions are set out in Guidance Note 34 *Naming Conventions for Debt and Hybrid Securities*.

An appropriate description of a retail debt security that meets those naming conventions should appear on all “relevant documentation”, as defined in Guidance Note 34. This includes on the cover of the prospectus for the security, as well as where the security is first described in the investment overview section of the prospectus.¹⁵⁷

¹⁵⁵ Sections 283BH(1). Note that if the government adopts regulations exempting the issuers of simple corporate bonds from section 283AA of the Corporations Act (see note 142 and accompanying text), that will have the effect of removing the requirement for those issuers to comply with the naming requirements in section 283BH, by virtue of the operation of section 283BA.

¹⁵⁶ A misleading description of a debt security in a prospectus potentially breaches sections 715A(1), 728(1) and 1041H of the Corporations Act.

¹⁵⁷ For guidance on the recommended contents of an investment overview section in a prospectus, see section C of [RG 228](#).

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