Updating ASX's admission requirements for listed entities

CONSULTATION PAPER 12 MAY 2016

ASX

Invitation to comment

ASX is seeking submissions on the proposals canvassed in this paper by **24 June 2016**. Submissions should be sent to:

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Attention: Diane Lewis
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ASX prefers to receive submissions in electronic form.

Submissions not marked as 'confidential' will be made publicly available on ASX's website.

If you would like your submission, or any part of it, to be treated as 'confidential', please indicate this clearly in your submission.

ASX is available to meet with interested parties for bilateral discussions on the proposals in this consultation paper.

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Introduction

ASX is the pre-eminent exchange for listings in Australia and New Zealand, and is regarded globally as a market of quality and integrity. ASX plays a vital role in the economic prosperity of Australia by providing issuers with access to capital to fund innovation and business expansion, and investors with confidence to pursue opportunities to grow their wealth and build for their retirement.

ASX has reviewed its requirements for admission to the ASX official list and is proposing changes to ensure that the ASX market continues to be a market of quality and integrity, and remains internationally competitive.

The key changes proposed relate mostly to entities seeking to list in the "ASX listing" category.[1] They are:

- increasing the financial thresholds for listing – both for the profit test and the assets tests;
- introducing a minimum free float requirement;
- changing the 'spread test' to better demonstrate a sufficient level of investor interest in the entity and its securities to justify listing;
- making the minimum working capital requirements consistent across all entities admitted under the assets test; and
- introducing a requirement for entities admitted under the assets test to provide audited accounts for the last three full financial years.

A number of other changes are also proposed to simplify and improve the drafting and operation of the admission rules generally.

The proposed rule changes complement changes that ASX has already made to its admission processes to maintain and enhance the integrity and reputation of the ASX market.

In this regard, listing rules 1.19 and 2.9 currently provide that ASX has an absolute discretion in deciding whether or not to admit an entity to the official list and to quote its securities. This includes both 'front door' and 'back door' listings. The discretion not to admit and quote may be exercised even where an entity technically meets all of the specific conditions set out in the listing rules for listing and quotation.

Earlier this year, ASX established a formal process for reviewing certain types of listing applications to determine whether ASX should exercise its discretion under listing rule 1.19 to refuse admission. Relevant factors considered during this process include such things as the applicant's structure and operations, its business and where it is conducted, its reasons for seeking a listing on ASX's market, the credentials of its promotors and management, and any issues that have been raised by a regulator or another market operator. All applications from entities that are incorporated in, have their main business operations in, or have a majority of their board or a controlling security holder resident in, an emerging or developing market are now subject to this process.

ASX is proposing to update Guidance Notes 1 *Applying for Admission – ASX Listings*, 4 *Foreign Entities Listing on ASX*, 12 *Significant Changes to Activities*, 29 *Applying for Admission – ASX Debt Listings* and 30 *Applying for Quotation of Additional Securities* to reflect the proposed rule changes and the new admission processes mentioned above. This includes providing additional examples in Guidance Note 1 of circumstances that may

[1] Referred to in this consultation paper as "ASX listings". These are entities admitted under listing rules 1.1-1.7. They do not include ASX debt listings admitted under listing rules 1.8-1.10 or ASX foreign exempt listings admitted under listings rules 1.11-1.15.

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indicate that an applicant does not have an acceptable structure and operations for a listed entity and when ASX may exercise its discretion not to admit an entity to the official list.

ASX is also proposing to update Guidance Note 12 to address some emerging issues it has identified with back door listings.

Drafts of the proposed changes to Guidance Notes 1, 4, 12, 29 and 30 are included with this consultation package.

The package of measures discussed in this paper seeks to strengthen the ASX listing rules framework and maintain an appropriate balance between the interests of issuers and investors in promoting efficient capital raising, maintaining market integrity and providing a market that is internationally competitive.

Increasing the financial thresholds for listing

Entities seeking admission as an ASX listing must satisfy one of two financial tests – the profit test or the assets test. The assets test in turn can be satisfied in one of two ways – by meeting a minimum net tangible assets (NTA) requirement or a minimum market capitalisation[2] requirement.

The profit and assets tests are complementary requirements which cater for entities at different stages in their lifecycle and allow a diverse range of industries to access funds through ASX's market.

Meeting the profit or assets tests assists ASX to satisfy itself that the entity meets ASX's minimum standards of quality, size and operations. These minimum standards form part of the principles underpinning the ASX listing rules,[3] which maintain the reputation of ASX's market in the interests of both issuers and investors.

ASX is proposing to increase the profit and assets test thresholds to ensure that the minimum standards for size, quality and operations are maintained over time without adversely impacting on the international competitiveness of the ASX market.

Increasing the profit test thresholds

Entities with established operations and a track record of profitability are able to seek admission under the profit test. Currently, the profit test requires that the entity:

- is a going concern and has conducted the same main business activity during the last 3 full financial years prior to admission;
- has aggregated profit of at least $1 million from continuing operations for the last 3 full financial years prior to admission; and
- has consolidated profit from continuing operations of at least $400,000 for the 12 months prior to admission.

These thresholds have not changed since 1994.

ASX proposal: to increase the consolidated profit requirement under the profit test for the 12 months prior to admission to at least $500,000.[4] The other requirements in the profit test will remain unchanged.

While ASX considers that the profit test overall remains appropriate for the Australian market, it is proposed that the requirement for consolidated profit from continuing operations for the 12 months prior to

[2] "Market capitalisation" is defined as the number of securities in the main class on issue multiplied by the price decided by ASX (which is normally the issue or sale price under the entity's listing prospectus or PDS).

[3] The principles are set out in the introduction to the ASX listing rules.

[4] The 12 month period must end on a date no more than 2 months prior to admission.

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admission be increased to $500,000. This moderate increase is aimed at maintaining over time appropriate minimum standards of size and quality to be listed on the market.

Increasing the assets test thresholds

Currently, the minimum requirements for entities other than investment entities[5] to meet the assets test are an NTA of at least $3 million[6], or a market capitalisation of at least $10 million.

The NTA threshold was set at $2 million in 1992 and not increased until 2012, when it was changed to $3 million. The $10 million market capitalisation threshold has been in place unchanged since 1999.

ASX proposal: to increase these thresholds to an NTA of at least $5 million or a market capitalisation of at least $20 million.

The assets test allows an entity without a track record of profitability to apply for admission on the basis of its NTA or market capitalisation. The option of being admitted by meeting the minimum market capitalisation requirement provides a gateway to listing for entities that might have difficulty in meeting the NTA requirement because they have assets largely in intangible form (for example, entities in new growth industries, such as scientific and medical research, where research expenditure has been capitalised and cannot be counted as a tangible asset).

ASX has a long history in supporting the listing of early stage and start-up enterprises which may be unable to point to a track record of profitability and which may hold largely intangible assets. For instance, for many years, admission under the assets test has provided a pathway for resources entities in the exploration phase of their lifecycle to list and raise funds when other sources of funds are not available. This flexibility in the ASX listing rules is also well suited to early stage start-ups in new growth industries.[7]

While acknowledging the importance of maintaining the assets test to accommodate entities in the early stages of their lifecycle and in new growth industries, ASX considers that an increase to the minimum NTA and market capitalisation requirements will assist to maintain the quality of the market. The proposed increases to the financial requirements under the assets test should provide greater surety that the listed entity has sufficient resources to carry on its business for a reasonable period.

Introducing a minimum free float requirement

ASX does not currently have in place a rules-based requirement for the minimum proportion of an entity's securities that will be available at listing for investors to freely trade in the public market ("free float"). To date, ASX has taken a flexible approach to this issue and has addressed it through guidance.

As stated in Guidance Note 1, ASX has generally expected that entities will list with a free float of at least 10%, but has been prepared to admit entities with a lower free float if the entity has explained its plans to increase its free float to at least 10% and set out the timeframe for that to occur. Under this approach, "free float" has been interpreted as the percentage of the entity's main class of securities held by parties other than related parties and the trustee or trustees of any employee incentive scheme.

[5] For investment entities, the requirements are an NTA of at least $15 million (after deducting the costs of fund raising), or for pooled development funds, an NTA of at least $2 million (after deducting the costs of fund raising). ASX is not proposing to change these requirements.

[6] After deducting the costs of fundraising.

[7] For example, in 2015, there were 25 technology company initial public offerings (IPOs) undertaken on the ASX market, raising well in excess of $1 billion. Twenty of these technology company IPOs were admitted under the assets tests, with 15 companies admitted under the NTA test and 5 companies admitted under the market capitalisation test.

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Peer exchanges generally have a rules-based minimum free float requirement in the range of 12 – 25% (although those exchanges also tend to have more easily satisfied minimum spread requirements than ASX).[8]

ASX proposal: to introduce a rules-based 20% minimum free float requirement for ASX listings at the time of admission.

"Free float" will be defined by ASX as the percentage of the entity's main class of securities that are not restricted securities or subject to voluntary escrow, and that are held by non-affiliated security holders.

A "non-affiliated security holder" will in turn be defined as a security holder who is not a related party of the entity, an associate of a related party of the entity, or a person whose relationship to the entity or to a related party of the entity or their associates is such that, in ASX's opinion, they should be treated as affiliated with the entity.

The proposed 20% minimum free float requirement is aimed at striking an appropriate balance between supporting liquidity in the secondary market and supporting innovation and emerging growth industries. Typically, early stage technology entities seek access to funds and an initial listing with a lower free float. As these entities grow, it is expected that they will raise further capital and the level of free float will increase.

As discussed earlier in this paper, ASX has a long history in facilitating access to capital by early stage entities and playing an important role in the development of a vibrant small and medium-sized enterprises (SME) sector to support economic growth. Recognising that ASX has one market with a diverse range of listed entities (both by size and market segment), ASX considers that a rules-based 20% minimum free float requirement will maintain market quality and integrity while also maintaining admission requirements that support early stage entities and emerging growth industries in accessing capital which may not be available through other sources. It will also provide investors with a greater diversity of investment opportunities.

ASX has seen an increasing incidence in recent times of entities seeking to list with a relatively small free float. To address this, ASX is currently exercising its discretion under listing rule 1.19 and administering the listing rules to require an applicant for an ASX listing to have a minimum free float (as defined above) at the time of listing of 20%. The rule change proposed above will formalise this position.

Changing the spread test

Currently, under listing rule 1.1 condition 7, ASX's spread test can be satisfied in one of three ways:

- by having 400 security holders who hold a parcel of securities with a value of at least $2,000; or
- by having 350 security holders who hold a parcel of securities with a value of at least $2,000, where there is a free float of at least 25%; or
- by having 300 security holders who hold a parcel of securities with a value of at least $2,000, where there is a free float of at least 50%.

ASX does not have a rules-based requirement for a minimum number of Australian resident security holders counted in spread. However, ASX has issued guidance setting out an expectation that there should be a reasonable number of Australian resident security holders and that a specific requirement may be imposed as a condition of admission.[9]

[8] For example, both HKEx and NZX require 25% of a listed entity's issued share capital at listing to be held by public shareholders, while SGX requires between 12% and 25% depending on the market capitalisation of the entity.

[9] See Guidance Note 1 *Applying for Admission – ASX Listings* section 3.6 'Minimum spread'.

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ASX proposal: to change the minimum spread requirement for ASX listings to require:

- 200 security holders if the entity has a free float of less than A$50 million, or 100 security holders if the entity has a free float of A$50 million or more; and
- each security holder counted towards spread must hold a parcel of securities with a value of at least A$5,000.

ASX will not impose a rules-based residency requirement for spread but will retain its existing discretion to impose such a requirement in an appropriate case. Guidance Note 1 will be amended to give more specific examples of when ASX is likely to exercise that discretion.[10]

The primary purpose of the spread test is to demonstrate sufficient investor interest in an entity to warrant its listing. In this context, the spread test provides a proxy for quality of the entity seeking admission. Achieving a minimum security holder spread at the time of listing has also been regarded as contributing to liquidity in the secondary market at the time of admission.

ASX's proposed changes to the spread test will significantly increase the value of the parcel of securities to be held by each security holder from at least $2,000 to $5,000, without materially changing the overall financial threshold for entities seeking to list. This change will allow ASX to satisfy itself of investor interest by reference to an investment representing a real and significant financial commitment to the entity seeking admission. This increase will be counterbalanced with a decrease in the number of initial investors required, so that the significant increase to the value component of the test does not create an unreasonable hurdle to listing.

The new spread test will maintain the current connection between the entity's free float and the level of spread required. This requirement is expected to support liquidity following listing and assist ASX to satisfy itself that the entity has attracted sufficient investor interest in the Australian investor community to justify listing.

Applying the same working capital requirements to all assets test entities

All entities admitted under the assets test are currently required to have at least $1.5 million in working capital, after taking into account any budgeted revenue for the first full financial year after listing. For mining and oil and gas exploration entities, this $1.5 million in working capital must be available after allowing for the first full financial year's budgeted administration costs, and the costs of acquiring plant, equipment and/or tenements.

ASX proposal: to standardise the current $1.5 million minimum working capital requirement by extending the additional requirements that currently apply only to mining and oil and gas exploration entities, to all entities admitted under the assets test.

Under the amended rule, an entity admitted under the assets test must have at least $1.5 million in working capital available after:

- taking into account the entity's budgeted revenue for the first full financial that ends after listing; and

[10] Specifically, Guidance Note 1 will state that ASX will generally exercise its discretion to require a minimum number of Australian resident security holders for spread purposes: "where an applicant is incorporated in, has its main business operations in, or has a majority of its board or a controlling security holder resident in, an emerging or developing market. In ASX's experience, these types of entities tend to target or attract investors from the emerging or developing market, making it less likely that they will trade on ASX and more difficult for ASX to conduct its usual checks to verify that minimum spread has been obtained without using artificial means. Typically, in such a case, ASX will require at least 75% of the minimum spread to come from investors resident in Australia."

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- allowing for the first full financial year's budgeted administration costs and the cost of acquiring any assets referred to in the prospectus, PDS or information memorandum (to the extent that those costs will be met out of working capital).

Extending the requirement for at least $1.5 million in working capital to be available after deducting administration costs and the costs of acquiring any assets to all entities admitted under the assets test is aimed at providing greater certainty to investors in relation to the working capital that is available. It is also intended to increase the likelihood that the listed entity has sufficient resources to carry on its business for a reasonable period.

It should be noted that the $1.5 million working capital requirement for entities admitted under the assets test in the listing rules is a minimum requirement only. Entities are also required to include a statement in their prospectus or PDS that they have sufficient working capital to carry out their stated objectives, or else provide such a statement to ASX from an independent expert.

Requiring audited accounts from assets test entities

Under the listing rules, entities admitted under the assets test currently have greater flexibility than entities admitted under the profit test in relation to the provision of financial accounts. Entities admitted under the assets test are allowed under the rules to provide unaudited accounts and provide accounts for a period shorter than 3 full financial years. They must also ordinarily provide a pro forma statement of financial position reviewed by an auditor or independent accountant. This approach has been taken having regard to the nature of the assets test, as a pathway to listing for early stage and start up enterprises.

ASX proposal: to introduce a new requirement for entities seeking admission under the assets test to produce audited accounts for the last 3 full financial years. If the accounts for the last full financial year are more than 8 months old, it is proposed that the entity also be required to produce audited or reviewed accounts for the last half year.

ASX is further proposing that an entity seeking admission under the assets test be required, unless ASX agrees otherwise, to produce 3 full financial years of audited accounts for any entity or business to be acquired by the entity at or ahead of listing. This change will have particular application to backdoor listings.

The proposed rules will require that the audit reports or review must not contain a modified opinion, emphasis of matter or other matter paragraph that ASX considers unacceptable.

The proposed changes more closely align the requirements for entities admitted under the assets test with those admitted under the profit test, which are required under the rules to produce audited accounts for the last 3 full financial years and, if the accounts for the last full financial year are more than 8 months old, audited or reviewed accounts for the last half year.

The proposed changes will assist ASX in assessing the suitability of an entity seeking admission under the assets test and provide investors with greater assurance of the financial condition of the entity in which they are investing. They will also promote consistency between ASX and ASIC in the approach taken to these issues (see below).

ASX recognises that an entity seeking admission under the assets test may not be in a position to provide 3 full financial years of audited accounts. This would be the case, for example, if it is a start-up or has been in operation for less than 3 full years. ASX will have discretion under the proposed new rules to accept less than 3 full financial years of audited accounts in an appropriate case. However, ASX proposes, and a note to the relevant rules will state, that ASX will generally only do so in the circumstances where ASIC will accept less than 3 full years of audited accounts in a disclosure document.

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A note to the relevant rules will also state that ASX will generally only accept a modified opinion, emphasis of matter or other matter paragraph in such accounts that ASIC will accept in a disclosure document, as outlined in Part F of ASIC Regulatory Guide 228.

ASIC is simultaneously consulting on proposed changes to Part F of ASIC Regulatory Guide 228 setting out its policy on the requirement generally for a disclosure document to include 3 full years of audited accounts, the circumstances in which ASIC may accept less than 3 full years of audited accounts, and the types of modified opinion, emphasis of matter or other matter paragraph ASIC will accept for these purposes.

ASX is interested in any feedback stakeholders may have on whether there are other circumstances where ASX should be prepared to accept less than 3 full years of audited accounts, and the types of modified opinion, emphasis of matter or other matter paragraph it should be prepared to accept, in addition to those set out in the consultation paper on ASIC Regulatory Guide 228.

Reinforcing ASX's discretion to refuse admission to the official list

ASX proposal: to update the introduction of the ASX listing rules to reinforce ASX's absolute discretion on admission and quotation decisions and to state that ASX will take into account the reputation, integrity and efficiency of its market in exercising these discretions.

ASX also proposes to amend Guidance Note 1 to:

- provide examples of when ASX may exercise its discretion not to admit an entity to the official list; and
- provide additional examples of circumstances that may indicate that an applicant does not have an acceptable structure and operations for a listed entity.

The updated guidance in Guidance Note 1 will include the following non-exhaustive examples of when ASX may exercise its discretion not to admit an entity to the official list:

- ASX is not satisfied that the applicant has an appropriate structure and operations for a listed entity;
- ASX is not satisfied with the qualifications and experience of the auditor who provided the audit report for, or conducted a review of, the entity's accounts or its pro forma statement of financial position;
- ASX has had prior unacceptable dealings with the applicant or a director, promoter, broker, auditor, investigating accountant or professional adviser involved in the application;
- the applicant appears to ASX to be seeking a listing on ASX for collateral purposes unrelated to accessing Australian capital markets;
- ASIC or another corporate regulator has expressed concerns 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 may put at risk the reputation of the ASX market as one of quality and integrity.

The updated guidance in Guidance Note 1 will provide the following additional examples of where an applicant for listing may not have an acceptable structure and operations for a listed entity:

- where the applicant has a vague or ill-defined business model or its business operations do not appear to ASX to have any substance;

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- where the applicant is established in an emerging market and ASX is not satisfied that the level of corporate regulation in that market is appropriate for a listed entity;
- where ASX is not satisfied as to the legality of the applicant's business operations in any jurisdiction where they are materially carried on;
- where the applicant holds a derivative or economic interest in a material part of its assets or business operations via potentially risky contractual arrangements with the owner of the assets or operations (including, but not limited to, Chinese VIE structures) rather than by owning them itself or through a child entity;
- where the applicant's board has no directors with experience directing or managing a listed entity;
- where the applicant's board has no directors with experience directing or managing a business of the type that the entity will have at the time of its proposed listing;
- where the applicant appears to ASX to have structured its board and management to avoid having to meet the good fame and character requirements for a particular individual;
- where the applicant appears to ASX to have priced the offer of its securities under its listing prospectus or PDS at an artificially high price in an attempt to meet the market capitalisation test or ASX's minimum spread requirements; and
- where the applicant has not stipulated a minimum subscription condition for the offer of securities under its listing prospectus or PDS or the minimum subscription condition it has stipulated does not appear to ASX to be sufficient to provide enough capital to meet its business objectives.

Changes applicable to ASX Foreign Exempt listings

ASX currently permits a foreign entity that has its main listing on an overseas market which is a member of the World Federation of Exchanges (WFE) and that meets certain eligibility criteria, to maintain a secondary listing on the ASX market as an "ASX Exempt Listing". Entities in this category are expected to comply primarily with the Listing Rules of their home exchange and are exempt from complying with most of ASX's Listing Rules, including the continuous disclosure requirements in Listing Rule 3.1.

ASX has a special regime for entities listed on the NZX main board which permits them to list on ASX as an ASX Foreign Exempt listing if they meet the same profit test or assets test thresholds as apply to standard ASX listings (mentioned above). This reflects the Closer Economic Relationship between Australia and New Zealand and the fact that New Zealand has a regulatory framework (including continuous disclosure rules) broadly equivalent to Australia's.

All other entities seeking to list on ASX as an ASX Foreign Exempt listing must have at least A$200 million operating profit before tax for each of their last three years or net tangible assets of at least A$2,000 million.

There are currently only 8 non-New Zealand entities listed on ASX as ASX Foreign Exempt listings.[11] It is a category that ASX would like to see grow over time to provide a wider range of high quality overseas listed entities for Australian investors to invest in.

[11] They are Alcoa Inc., ResMed Inc., Iron Mountain Inc., iShares Inc. and iShares Trust (US), CYBG PLC (UK), MMG Limited (Hong Kong) and AngloGold Ashanti Limited (South Africa).

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ASX proposal: to amend listing rule 1.11 condition 1 to require the overseas exchange on which a foreign exempt listing is listed to be one "acceptable to ASX" and also amend the assets test for foreign exempt listings to require such entities either to have either minimum net tangible assets of $2,000 million (as is currently the case) or a minimum market capitalisation of $2,000 million.

The WFE has a very broad membership and not all of its member exchanges have a regulatory framework equivalent to that applying to ASX listed entities. To tighten the admission criteria for ASX Foreign Exempt listings, ASX proposes to require that the home exchange not only be a member of the WFE but also one that is "acceptable to ASX".

ASX proposes to amend section 2.1 of Guidance Note 4 to list the exchanges it considers acceptable for these purposes, being the main boards of Deutsche Börse, EuroNext (Amsterdam), EuroNext (Brussels), EuroNext (Paris), HKSE, JSE, LSE, SGX, TSE (Tokyo), TSX (Toronto), NASDAQ, NYSE and NZX. These are exchanges that ASX regards as having a regulatory framework broadly equivalent to the framework applying to Australian entities with their primary listing on ASX.

For consistency with the admission regime for standard ASX listings, ASX believes it is appropriate also to expand the assets test for ASX Foreign Exempt listings to provide a market capitalisation alternative. ASX proposes to set the market capitalisation threshold at $2,000 million, the same as the NTA threshold. This hopefully will encourage, over time, more large overseas entities with a primary listing on an acceptable market to pursue a secondary listing on ASX.

Other amendments

ASX is also proposing a number of other changes to update the listing rules, including:

- amending the admission requirements across all categories of listings – ASX listings, ASX debt listings and ASX foreign exempt listings – to make them clearer and more easily understood;
- clarifying the requirements across all categories of listings for an entity either to have its securities, or CDIs over its securities, approved by ASX Settlement (these approvals allow settlement and registration of title in the entity's securities to occur electronically through CHESS);
- removing the requirements across all categories of listings for foreign entities to maintain a certificated register in Australia;
- rationalising the admission requirements for trusts across all categories of listings for consistency with ASIC's approach to granting exemptions from the requirement for listed trusts to be registered as managed investment schemes under the Corporations Act (ASIC will generally only grant such an exemption where the responsible entity of the trust is either an Australian company or is registered as a foreign company carrying on business in Australia under the Corporations Act);
- reinforcing the requirement for foreign listed companies and for foreign responsible entities of listed trusts to register as foreign companies carrying on business in Australia under the Corporations Act by including in Chapter 12 new rules (listing rules 12.6A and 12.6B) imposing an ongoing requirement to maintain that registration;[12]
- inserting a number of additional defined terms - "Australian company", "Australian entity", "Australian trust", "foreign company", "foreign entity", "foreign trust" and "responsible entity" - to more clearly distinguish between Australian and foreign entities; and

[12] There will be a carve-out from this requirement for foreign companies and trusts listing as ASX debt listings that only have wholesale debt securities quoted on ASX and also for "qualifying NZ entities" listing as ASX foreign exempt listings.

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- some other drafting refinements.

As mentioned previously, ASX will be updating Guidance Notes 1, 4, 12, 29 and 30 to reflect the changes to the admission rules proposed in this paper and also to provide further guidance on ASX's policies and procedures across a range of matters.

This includes, in particular, amendments to Guidance Note 12 addressing some emerging issues with backdoor listings. Key amongst these changes will be a modification to the point at which ASX suspends trading in the securities of an entity pursuing a backdoor listing.

ASX currently allows the securities of an entity that announces a backdoor listing to continue trading after the announcement up to the day on which its security holders are asked to approve the transaction under listing rule 11.1.2 and, if they approve it, ASX then suspends trading in the entity's securities until it has re-complied with ASX's admission and quotation requirements under listing rule 11.1.3. This approach preserves the maximum flexibility for investors to buy or sell securities in the lead-up to security holder approval. However, it also provides a window for potential mischief, particularly in respect of pre-emptive capital raisings prior to security holder approval.

ASX is changing this policy so that it will now suspend trading in an entity' securities from the moment it announces a backdoor listing transaction until it has re-complied with ASX's admission and quotation requirements under listing rule 11.1.3. This change in policy will put backdoor listings on the same footing as front door listings, which can only trade if and when they have met ASX's admission and quotation requirements.

This change in policy will take effect immediately and apply to all backdoor listing transactions announced after the date of this consultation paper.

Attachments

The proposed changes to the listing rules discussed in this paper are provided in mark-up in Attachment A.

The proposed changes to Guidance Notes 1, 4, 12, 29 and 30 are provided in mark-up in Attachments B, C, D, E and F respectively.

This consultation

ASX is seeking submissions on the proposals canvassed in this paper by **24 June 2016**.

Submissions should be sent by email to:

regulatorypolicy@asx.com.au

or by post to:

Office of General Counsel
ASX Limited
20 Bridge Street
Sydney NSW 2000
Attention: Diane Lewis
Senior Manager, Regulatory & Public Policy

ASX prefers to receive submissions in electronic form.

Submissions not marked as 'confidential' will be made publicly available on ASX's website. If you would like your submission, or any part of it, to be treated as 'confidential', please indicate this clearly in your submission.

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ASX is available to meet with interested parties for bilateral discussions on the proposals in this consultation paper.

Next steps and transition

ASX will consider the feedback it receives in this consultation before engaging with ASIC (and, if necessary, the Minister) with a view to finalising the proposed changes to the listing rules. Subject to the necessary regulatory approvals, it is anticipated that the final changes will be released in early August 2016 and will come into effect on 1 September 2016.

As mentioned above, ASX is currently exercising its discretion and administering the listing rules to require all applicants for an ASX listing to have a minimum free float at the time of listing of 20%. The rule change proposed above to introduce a rules-based 20% minimum free float requirement will formalise this position.

All of the other rule changes proposed in this consultation paper will come into effect for listing applications received on or after 1 September 2016. Applications received prior to that date will be assessed against the admission requirements in the current listing rules.

Apart from the guidance around the 20% minimum free float requirement in Guidance Notes 1 and 4, which is already being applied by ASX in practice, the changes to Guidance Notes 1, 4, 12, 29 and 30 that specifically address the new admission rules will also come into effect on 1 September 2016, at the same time as the rules in question.

All of the policy and process changes referred to in the consultation versions of Guidance Notes 1, 4, 12, 29 and 30 that are not specifically related to the proposed rule changes should be regarded as coming into force as at the date of this consultation paper. This includes the additional guidance in those Guidance Notes about ASX's absolute discretion on whether or not to admit an entity to the official list, the additional examples of unacceptable structures and operations for listing, and the need for applicants whose applications may raise issues under this amended guidance to engage with ASX in advance of applying for listing. It also includes the updates to ASX's policies and processes for backdoor listings in Guidance Note 12, including ASX's change in policy to suspend trading in an entity' securities from the moment it announces its intention to pursue a backdoor listing transaction until it has re-complied with ASX's admission and quotation requirements under listing rule 11.1.3.

Consultation questions

ASX is interested in any and all feedback that listed entities and other stakeholders may have on the proposed changes canvassed in this consultation paper. In particular, ASX would be interested in any feedback on the questions attached.

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Updating ASX's admission requirements for listed entities – consultation questions
1. Do you support the introduction of a 20% minimum free float requirement? If not, why not and would you support a different minimum free float requirement?
2. Do you have any comments on the proposed definitions of "free float" and "non-affiliated security holder" for the purpose of the proposed minimum free float requirement? Do you see any issues with excluding shares that are subject to voluntary escrow from the definition of "free float"?
3. Do you support the proposed changes to the spread test? If not, what element or elements of the changes do you not support, and what are your reasons?
4. Do you support the increase in the last year's profit element of the profit test? If not, please provide your reasons.
5. Do you support the increase in the net tangible assets and market capitalisation elements of the assets test? If not, please provide your reasons.
6. Do you think it is appropriate to extend the minimum requirement for $1.5 million working capital after deducting the first year's budgeted administration costs and costs of acquiring any assets (to the extent that those costs will be met out of working capital) to all entities admitted under the assets test? If not, please provide your reasons.
7. Do you think it is appropriate to maintain a fixed minimum $1.5 million working capital requirement in addition to a requirement for the entity admitted under the assets test to make a statement that it has sufficient working capital to meet its stated objectives? If you think the fixed working capital requirement should be a different amount, please tell us the amount and explain why.
8. Do you support the proposed requirement for entities admitted under the assets test to provide 3 full financial years of audited accounts, unless ASX approves otherwise? If not, please provide your reasons and describe what, if any, alternative approach you consider should be taken by ASX in order to meet the objectives of the proposed change.

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9. ASX has proposed that it will generally accept less than 3 years of audited accounts for an assets test entity (or an entity or business to be acquired by the entity) only in the circumstances where ASIC will accept less than 3 full years of accounts in a disclosure document, as explained in Part F of ASIC Regulatory Guide 228 (RG 228). Simultaneously with the release of this consultation paper, ASIC has released a consultation paper seeking comments on proposed changes to RG 228 setting out these circumstances. Are there additional circumstances where you consider ASX should be prepared to accept less than 3 years of audited accounts to those outlined in ASIC's consultation paper on RG 228?
10. ASX has also proposed that it will only accept the types of modified opinion, emphasis of matter or other matter paragraph in accounts lodged with a listing application that ASIC will accept in a disclosure document, as explained in Part F of RG 228. Are there additional types of modified opinion, emphasis of matter or other matter paragraph that you consider ASX should be prepared to accept to those outlined in ASIC's consultation paper on RG 228?
11. Do you agree with the list of overseas home exchanges proposed in section 2.1 of Guidance Note 4 (ie the main boards of Deutsche Börse, EuroNext (Amsterdam), EuroNext (Brussels), EuroNext (Paris), HKSE, JSE, LSE, SGX, TSE (Tokyo), TSX (Toronto), NASDAQ, NYSE and NZX) as being ones generally acceptable for an ASX Foreign Exempt listing? Are there any of these exchanges you would delete from this list? Are there any other exchanges you would add to this list?
12. Do you agree with the introduction of a further window for admission for ASX Foreign Exempt listings allowing them to be admitted to ASX if their market capitalisation is at least $2,000 million? If not, what threshold (if any) do you think would be appropriate?
13. Are there any specific issues or concerns that you can identify that would result from ASX removing the current requirements for foreign entities listed on ASX to maintain certificated registers in Australia?
14. Do you believe the transition date of 1 September 2016 that ASX proposes for the introduction of the new admission rules is appropriate? If you think it should be sooner or later, please explain why?
15. Do you have any other comments on the issues discussed in this paper or the proposed listing rule and Guidance Note changes?

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