



# Listed Entities Update

24 November 2014

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## Update no 11/14

### 1. Update to ASX Listing Rules Guidance Note 12 Significant Changes to Activities

In case you missed, it, ASX recently released an updated version of [ASX Listing Rules Guidance Note 12 Significant Changes to Activities](#) with further guidance in:

- **Section 3.2 (the main circumstances in which ASX will apply Listing Rules 11.1.2 and 11.1.3)** - that when it applies the "doubling up" test to work out whether it should examine a transaction more closely to determine if it might be a back door listing, ASX will usually use the entity's most recent published financial statements or, in the case of securities on issue, its Appendix 3B filings with ASX, as the reference point for the different financial measures referred to in this section of the Guidance Note.
- **Section 3.3 (prospectus / PDS / information memorandum)** - on the contents for an information memorandum (relevant to those re-compliance listings where an entity is not making an offer of securities as part of, or in conjunction with, a significant change to the nature or scale of its activities and ASX agrees to accept an information memorandum in lieu of a prospectus or PDS).
- **Section 3.6 (meeting the minimum spread test)** - that where an entity is undertaking a material capital raising in conjunction with a re-compliance listing, ASX will normally use the issue price under the prospectus or PDS for that capital raising to determine whether a holder's securities have a value of at least \$2,000 for the purposes of the minimum spread test. ASX may, however, use a different measure to determine the value of a holder's securities if the entity is not undertaking a material capital raising in conjunction with its re-compliance with the admission requirements or if ASX is concerned that the issue price under the prospectus or PDS does not fairly reflect the market value of its main class of securities.
- **Section 3.7 (meeting the profit test or assets test)** - giving general guidance on how ASX applies the profit test and assets test to a re-compliance listing and noting in particular that:
  - if an entity has failed to lodge any financial statements required under Chapter 4 in the period prior to its re-admission, or if the financial statements it has lodged with ASX have not been properly audited or reviewed as required by Chapter 4, ASX will insist that default is cured prior to its readmission taking effect. This applies even where the entity is being re-admitted under the assets test and it would not ordinarily have to produce audited or reviewed financial statements to meet that test;
  - where an entity is required under Listing Rule 11.1.3 to re-comply with the admission requirements, it must provide to ASX a reviewed pro forma statement of financial position, together with the review, as if it were being admitted to the official list for the first time. The reviewed pro forma statement of financial position must show the effect if the proposed transaction or transactions that led to ASX imposing the requirement to re-comply with the admission requirements are consummated, as well as reflect any material change in the financial position of the entity since the balance date of the last financial statements given to ASX under Chapter 4; and



not listed on ASX, ASX will generally require the non-listed entity's financial statements, together with any audit report or review in relation to those financial statements:

- for the last 3 full financial years (or shorter period if ASX agrees); and
- if the non-listed entity's last full financial year ended more than 8 months before the listed entity applied for admission, for the last half year (or longer period if available) from the end of the last full financial year,

to be given to ASX before the listed entity's re-admission takes effect.

- **Section 3.13 (pre-emptive capital raisings)** - dealing with capital raisings that occur ahead of obtaining security holder approval under Listing Rule 11.1.2 or re-complying with the admission requirements under Listing Rule 11.1.3.
- **Section 4.2 (the application of Listing Rule 11.2)** - noting the decision in Quancorp Pty Ltd v MacDonald [1999] WASCA 33 that, by necessary implication, Listing Rule 11.2 does not apply to an in specie distribution of an entity's main undertaking to the holders of its ordinary securities on a pari passu basis.
- **Section 6.1 (the contents of the notice)** - on the information that should be included in a notice of meeting approving a transaction under Listing Rules 11.1.2 or 11.2. The new guidance notes that:
  - where an entity is required both to obtain security holder approval to a proposed transaction under Listing Rule 11.1.2 and to re-comply with the admission requirements under Listing Rule 11.1.3, ASX would generally expect any material information about the transaction included in any prospectus, PDS or information memorandum lodged to re-comply with the admission requirement in Listing Rule 1.1 condition 3, also to be included in the notice of meeting to security holders seeking their approval. This is on the basis that if the information is sufficiently material to require disclosure to investors in a prospectus, PDS or information memorandum, it is likely also to be sufficiently material to require disclosure to security holders in the notice of meeting.
  - having said this, ASX recognises that an entity in this situation may not want to go to the trouble and expense of preparing a prospectus, PDS or information memorandum under Listing Rule 1.1 condition 3 unless and until it knows that its security holders approve the transaction. It therefore may not have available to it at the time it prepares and dispatches the notice of meeting seeking security holder approval all of the information that will ultimately find its way into the prospectus, PDS or information memorandum. Where that is the case, the entity should nonetheless include in the notice of meeting all material information that is known to it and its directors at the time of dispatching the notice.
  - Thus, for example, if at the time the entity prepares and dispatches the notice of meeting seeking security holder approval, it has already received a completed review by a registered company auditor or independent accountant of the pro forma statement of financial position that it will be lodging to re-comply with the admission requirements, the pro forma statement and the review should generally be included with the notice of meeting. If it hasn't received the completed review at the time of dispatching the notice of meeting, the notice should state that fact and include whatever pro forma financial information the entity and its directors used to determine that the transaction should be put to security holders for approval.

A footnote has also been added noting that putting out a notice of meeting with a pro forma statement of financial position that has not been reviewed by a registered company auditor or independent accountant may expose the entity and its directors to embarrassment and potential legal liability if the information in the reviewed version of the pro forma statement of financial position included in the entity's prospectus, PDS or information memorandum ultimately differs from the information included in the notice of meeting or if the reviewed version is subject to a material qualification. Entities and their directors may care to reflect on this issue when they determine the timetable for dispatching a notice of meeting seeking security holder approval under Listing Rule 11.1.2. In most cases, it would be better for this to happen after the entity has received the completed review by a registered company auditor or independent accountant of the pro forma statement of financial position so that this information can be included in the notice of meeting.

## 2. AOL user details

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Listed entities are reminded to keep their ASX Online company details and user details up to date, especially when a director or company secretary leaves the business. ASX uses the information in the company details section for important communications to listed entities and to resolve any queries in relation to announcements.

If you require assistance please do not hesitate to contact ASX Online Help Desk on 1 800 028 302 or email [ASX.Online@asx.com.au](mailto:ASX.Online@asx.com.au)

### 3. Reporting calendar

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The 2015 reporting calendar for listed entities is now available on the home page of ASX Online. Designed as a quick reference guide for listed entities with a 30 June or 31 December balance date, it outlines key reporting dates under the Listing Rules. It also indicates days on which ASX is closed.

If you require assistance to understand your entity's periodic reporting obligations please contact your Listings Compliance Adviser.

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