

# Listed@ASX Compliance Update

25 July 2016



## Update no 7/16

### 1. Continuous Disclosure - Naming Counterparties to Material Transactions

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ASX has recently identified a number of instances where listed entities have announced a material transaction without disclosing the identity of the other party or parties to the transaction. The transactions have included binding and non-binding terms sheets or memoranda of understanding for acquisitions or disposals of assets, off-take agreements, distribution agreements, strategic investments and financing arrangements.

ASX considers that if a transaction is sufficiently material to warrant disclosure under Listing Rule 3.1, the identity of the other party or parties will generally itself be material information that must also be disclosed under that rule. Such information is required by investors and their professional advisers to understand the ramifications of the transaction and to assess its impact on the price or value of the entity's securities.

Where there is little or no information regarding the other party or parties in the public domain (for example, because they are private companies), the announcement should also include a summary of the due diligence undertaken by the listed entity on their financial and other capacity to perform their obligations in relation to the transaction.

If ASX finds instances where a listed entity has not disclosed an appropriate level of information about the other party or parties to a material transaction, ASX will not hesitate to suspend trading in the entity's securities until the information has been released to the market.

Listed entities are also reminded that they must comply with their disclosure obligations under Listing Rule 3.1, even where they are party to a confidentiality or non-disclosure agreement that might otherwise require them to keep information confidential. ASX therefore will not accept as an excuse from a listed entity for not disclosing an appropriate level of information about the other party or parties to a material transaction that the entity is subject to confidentiality obligations prohibiting that disclosure.

For further information, entities should refer to [ASX Guidance Note 8 Continuous Disclosure: Listing Rules 3.1 - 3.1B](#).

### 2. Updating ASX's admission requirements for listed entities - change in transition date and to conditions for relief from the '20 cent' rule

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On 12 May 2016, ASX released the consultation paper '[Updating ASX's admission requirements for listed entities](#)'. The consultation process closed on 24 June 2016. There has been very constructive engagement in the consultation process, with a large number of high quality submissions provided to ASX.

ASX is in the process of giving careful consideration to the feedback received, including the potential impacts of some of the proposals for particular industry sectors. ASX is also undertaking further targeted discussions with stakeholders to assist in finalising the proposed changes to the listings admission requirements. ASX is aiming to provide a response to the consultation feedback and advise the changes to the listings admission requirements in September - October 2016.

Based on the feedback received and subject to the necessary regulatory approvals, ASX intends to defer the start date for the changes until 19 December 2016 (rather than the 1 September 2016 start date proposed in the consultation paper).

The consultation paper included proposed amendments to [Guidance Note 12: Significant Changes to Activities](#) addressing some emerging issues with backdoor listings, one of which included an amendment in section 8.8 to the conditions that an entity undertaking a back door listing had to meet to qualify for relief from the '20 cent' rule.

Having considered the feedback received, ASX has decided to modify those conditions so that they will now read (the changes are highlighted in bold italics):

- **either:**
  - ***the price at which the entity's securities traded on ASX over the 20 trading days preceding the date of the announcement of the proposed transaction (or, if the entity was already suspended at the time of the announcement, the last 20 trading days prior to its suspension) was not less than two cents each; or***
  - ***the entity announces at the same time that it announces the proposed transaction that it intends to consolidate its securities at a specified ratio that will be sufficient, based on the lowest price at which the entity's securities traded over the 20 trading days referred to previously, to achieve a market value for its securities of not less than two cents each;***
- the issue price or sale price for any securities being issued or sold as part of, or in conjunction with, the transaction:
  - is not less than two cents each; and
  - is specifically approved by security holders as part of the approval(s) obtained under Listing Rule 11.1.2; and
- ASX is otherwise satisfied that the entity's proposed capital structure after the transaction will satisfy Listing Rules 1.1 condition 1 and 12.5 (appropriate structure for a listed entity).

These revised conditions take effect immediately.

ASX is also updating the concluding paragraph in section 8.8 of Guidance Note 12 to read:

***ASX will closely examine any capital raising in the lead-up to, or following, the announcement of a transaction that requires re-compliance under Listing Rule 11.1.3 to ensure that it does not undermine the spirit and intent of the 20 cent rule or the policy considerations that underpin when ASX will consider granting relief from that rule. This includes not only capital raisings by the listed entity but also an issue of securities by an entity the listed entity is proposing to acquire or merge with as part of that transaction that, upon consummation of the acquisition or merger, will convert into securities in the listed entity. If ASX has concerns about the capital raising, it may deny relief from the 20 cent rule. Alternatively, it may require the entity to adjust the manner in which, or the ratio at which, it conducts a consolidation of its securities to address those concerns.***

*These changes to Guidance Note 12 take effect immediately.*

### 3. Listing and waiver applications declined by ASX 1 January 2016 - 30 June 2016

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ASX has an absolute discretion concerning the admission of an entity to the official list and the quotation

of its securities. ASX also has broad discretions under the Listing Rules whether to require or waive compliance with the Listing Rules in a particular case, to remove an entity from the official list and to suspend its securities from quotation.

In exercising these discretions, ASX takes into account the principles on which the Listing Rules are based (as set out in the introduction to the Listing Rules) and the imperative of maintaining the reputation, integrity and efficiency of the ASX market.

To enhance transparency and assist stakeholders to understand how ASX interprets and applies the Listing Rules, ASX intends to publish on a regular basis high level reasons why it has declined certain listing and waiver applications. The first of such publications, which covers the 6 month period ended 30 June 2016, is now available on the ASX website.

Going forward, ASX intends to publish this report on a quarterly basis.

## 4. Amendments to Appendix 4C and Appendix 5B- Quarterly Cash Flow Reports

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ASX announced on 27 June 2016 that it had finalised its amendments to the Appendix 4C and Appendix 5B quarterly cash flow reports following its review of the submissions received on its [consultation paper dated 26 February 2016](#). Copies of the final reports are available on the ASX website at the following links: [Appendix 4C](#) and [Appendix 5B](#).

As advised in [Listed@ASX Compliance Update no 03/16](#) the proposed changes to the Appendices seek to address certain inconsistencies between the Appendix 4C and Appendix 5B; to reflect the current accounting standards; and also to enhance the format of the two Appendices to make them more user friendly, both from the point of view of issuers and investors. This includes adopting a new, more intuitive, numbering system for the different sections of the Appendices and changing the order of some of those sections.

Subject to the receipt of the necessary regulatory approvals, ASX anticipates that the new Appendix 4C and Appendix 5B will be incorporated into the Listing Rules and come into effect on 1 September 2016. The new forms should be used for all quarterly cash flow reports for quarters ending on or after 30 September 2016.

## 5. Half yearly, preliminary final and change of balance date announcements: order of announcements and earlier release of announcements during reporting periods

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Listed entities are reminded that when releasing Appendix 4D/E/F and associated documents, the order in which the documents should be released is:

1. As applicable:
  - » Appendix 4D and other documents required to be given to ASX under ASX Listing Rule 4.2A (half yearly report) OR
  - » Appendix 4E and other documents required to be given to ASX under ASX Listing Rule 4.3A (preliminary final report) OR
  - » Appendix 4F and other documents required to be given to ASX under ASX Listing Rule 4.4A (report upon change of balance date).
2. Dividend/distribution online form (if and when applicable).
3. Any other material, for example, media releases and investor or analyst presentations.

Regardless of the order in which documents/online forms are e-lodged with ASX by listed entities, ASX will release the Appendix 4D/4E/4F to market first and other documents in the order set out above.

For further guidance, please refer to section 15 of [ASX Listing Rule Guidance Note 14](#).

Listed entities are also reminded that during Appendix 4D and 4E reporting periods, they can request early release arrangements for their financial reports if they have special requirements around the timing of the release of such announcements. The request must be made by email to [ASX Market Announcements](#). Please note that release under these arrangements is on a best endeavours basis.

## 6. Mining and oil and gas entities - annual reporting requirements

ASX would like to remind mining and oil and gas entities of their annual reporting requirements in [Chapter 5 of the ASX Listing Rules](#).

### *Mining entities*

5.20 ***Mining exploration entities*** must include in their annual report mining tenements held (including by child entities), their location and the percentage interest held in them.

5.21 ***Mining entities*** must include mineral resources and ore reserves statement in their annual report which includes:

- a summary of the results of the mining entity's annual review of its ore reserves and mineral resources;
- mineral resources and ore reserves holdings as at balance date (or other such date) in tabular form reported by:
  - commodity type, including the grade or quality;
  - ore reserve category and mineral resource category; and
  - geographical area based on the materiality of the mineral resources and ore reserves holdings to the mining entity;
- if mineral resource and ore reserve holdings are reported at a date other than balance date – material changes between that date and balance date;
- a comparison of mineral resource and ore reserve holdings against that from the previous year (including an explanation of material changes) reported by:
  - commodity type, including the grade or quality; and
  - total ore reserves and total mineral resources by geographical area based on the materiality of the mineral resources and ore reserves holdings to the mining entity; and
- a summary of governance arrangements and internal controls applying to its estimates of mineral resources and ore reserves and the estimation process.

### *Oil and gas entities*

5.37 **Oil and gas exploration entities** must include in their annual report, petroleum tenements held (including by child entities), their location and the percentage interest held in them.

5.38 **Oil and gas entities** who report to the SEC are exempt from ASX Listing Rules 5.39 and 5.40 if they meet certain SEC annual reporting requirements.

5.39 **Oil and gas entities** must include a reserves statement in their annual report which includes:

- petroleum reserves holdings as at balance date in tabular form reported by:
  - total 1P petroleum reserves and 2P petroleum reserves (split between developed and undeveloped petroleum reserves and by product). If there are material unconventional petroleum reserves the entity must separately identify the portion of the total 1P petroleum reserves and 2P petroleum reserves reported; and
  - total aggregated 1P petroleum reserves and 2P petroleum reserves by product and geographical area (split between developed and undeveloped petroleum reserves by geographical area);
- a reconciliation of petroleum reserves holdings against the previous year (by total 1P and 2P petroleum reserves by product or by total aggregated 1P and 2P petroleum reserves by geographical area), including an explanation of any material changes from the previous year;
- if any material concentrations of undeveloped petroleum reserves in material oil and gas projects have remained undeveloped after 5 years from the date they were initially reported, the oil and gas entity's reserves statement in the annual report for that year and every subsequent year must include:
  - an explanation of why the undeveloped petroleum reserves have not been developed; and
  - a statement of intention with regard to the future development of the undeveloped petroleum reserves; and
- a summary of the governance arrangements and internal controls, (including the frequency and scope of any reviews or audits) that apply to its estimates of petroleum reserves and the estimation process.

5.40 **If the petroleum reserves statement in the annual report includes aggregated estimates of contingent resources it must also include:**

- contingent resources holdings as at balance date in tabular form reported by:
  - total 2C contingent resources by product; and
  - aggregated 2C contingent resources by product and geographical area;
- a reconciliation of the oil and gas entity's total 2C contingent resources holdings against that from the previous year, including an explanation of any material changes in those holdings from the previous year.

Listed entities that fail to meet the above requirements in their annual reports will be required to make supplementary disclosure and may be subject to other ASX enforcement action. If you have any questions please consult your Listings Compliance Adviser.

## 7. Update to Guidance Note 15A- Schedule of ASX Listing Fees

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As advised to customers in February 2016, ASX has revised its listing fees for FY17. A fee increase of approximately 2.5% has been implemented across annual listing fees. Changes were also made to fees for quotation of additional securities. There is no change to the fee for quotation of simple corporate bonds.

The revised schedules have effect from 1 July 2016 and are available now in the revised [Guidance Note 15A: Schedule of ASX Listing Fees](#).

ASX has also revised its initial listing fees effective 1 January 2017. The changes are published [here](#) and will be reflected in Guidance Note 15A: Schedule of ASX Listing Fees from 1 January 2017.

## 8. Periodic report due date reminder

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Listed entities are reminded of upcoming deadlines for periodic reports:

- Quarterly reports for mining and commitments test entities: Friday 29 July 2016
- Preliminary final reports, 30 June balance date: Wednesday 31 August 2016
- Statutory half year financial reports (except mining exploration entities), 31 December balance date: Wednesday 31 August 2016
- Statutory half year financial reports for mining exploration entities, 31 December balance date: Tuesday 13 September 2016
- Statutory audited annual accounts, 30 June balance date: Friday 30 September 2016
- Annual reports, 30 June balance date: Monday 31 October 2016
- Next quarterly reports for mining and commitments test entities: Monday 31 October 2016

## 9. Next non-Business Day

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ASX reminds listed entities that the next non-Business Day is **Monday 1 August 2016**, a bank holiday in NSW (while this is a trading day on ASX, it is not a settlement day for ASX Settlement (CHESS) and therefore not a Business Day under the Listing Rules). Please take this into account if you are planning the timetable for a corporate action that will run over a period including that date.

## 10. Listing Rule 7.1A - Additional 10% Placement Capacity matters

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ASX reminds eligible entities that it has published a [Listing Rule 7.1A User Guide](#).

The User Guide contains detailed information on the operation of Listing Rule 7.1A, including information to assist eligible entities and their advisers in drafting the notice of meeting seeking security holder approval, and information to assist eligible entities with their disclosure requirements once an issue under the rule has been made.

Listed entities should note the following points when making issues under Listing Rule 7.1A:

### **Mandate from security holders**

Eligible entities making issues under Listing Rule 7.1A should ensure they have a mandate from their security holders to make the issue. Entities are reminded to cross-refer back to their notice of annual general meeting (at which the approval was obtained) where appropriate.

### **Additional disclosure**

Eligible entities making issues under Listing Rule 7.1A must disclose additional information each time they issue securities under that rule in their Appendix 3B and in the accompanying statements required by Listing Rule 3.10.5A and Appendix 3B (see also Listing Rule 7.1A.4(b)).

Where securities are issued for non-cash consideration, the entity must provide, for release to the market, a valuation of the non-cash consideration that demonstrates the issue price of the securities complied with Listing Rule 7.1A.3.

Where applicable, the above information is required to be disclosed the same day the issue is made.

For further information see sections 8.1 and 8.2 of the User Guide.

### **Items 6a to 6i and the annexures to Appendix 3B**

Eligible entities making issues under Listing Rule 7.1A are reminded to complete items 6a to 6i and the annexures to Appendix 3B for each issue of equity securities that is made (whether or not that issue was under rule 7.1A).

The issue must appear in one or more of items 6c-6f and the sum of the figures in those boxes must equal the number of securities issued set out in item 2 of the Appendix 3B. It is not acceptable to write 'N/A' or similar in all of boxes 6c-6f. The information for these items of the Appendix 3B is only in relation to the securities the subject of the Appendix 3B.

### **Issue price information**

Eligible entities making issues under Listing Rule 7.1A are reminded that the pricing information required by item 6g must be provided, including the 15 day VWAP figure and the source of the VWAP data.

ASX considers that the averaging of an issue price where a placement is made in combination with Listing Rule 7.1 is not acceptable (i.e. the issue of a number of securities which is split over rules 7.1 and 7.1A, and where the issue price of the whole placement is averaged to fit the price within the limitation set in Listing Rule 7.1A.3). The issue price of the number of securities issued under Listing Rule 7.1A must comply with the pricing limitation in Listing Rule 7.1A.3. Entities should discuss any potential pricing issues with their Listings Advisers prior to making an issue under rule 7.1A, as otherwise the entity potentially risks breaching Listing Rule 7.1.

Entities who have incorrectly completed the Appendix 3B may be asked to correct and re-lodge it with ASX Market Announcements where appropriate.

If an entity is unsure as to how to complete the Appendix 3B, it should contact its Listings Adviser. The most recent version of Appendix 3B in Word format is available [here](#) under the 'Appendices' tab.

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