

# Listed@ASX Compliance Update no. 12/20

16 December 2020

## 1. Amendments to Guidance Notes 5 and 8

ASX released updates to ASX Listing Rules Guidance Notes 5 *Chess Depositary Interests* and 8 *Continuous Disclosure: Listing Rules 3.1 – 3.1B* on 9 December 2020. They are available on the ASX website at:

[Guidance Note 5 CHES Depositary Interests](#)

[Guidance Note 8 Continuous Disclosure: Listing Rules 3.1 - 3.1B](#)

The change to Guidance Note 5 is relatively minor – an amended footnote addressing the use of the CHES settlement facility by entities formed in Israel, noting the need for those entities to have a provision in their constitution that securities holders are not entitled to a certificate for their securities.

The changes to Guidance Note 8 are more significant and include substantial enhancements to the materials on earnings guidance and earnings surprises in sections 7.1 to 7.3 of, and worked examples F and G in Annexure A to, that Guidance Note. This includes important new guidance that:

“Where an entity does not have published earnings guidance on foot for the current reporting period and it is covered by sell-side analysts, ASX would recommend that the entity carefully consider notifying the market of a potential earnings surprise if and when it expects there to be a 15% or greater difference between its actual or projected earnings for the period and its best estimate of the market’s expectations for its earnings (applying the guidance under the question 2 above ‘How does an entity translate sell-side analyst forecasts into an estimate of the market’s expectations for its earnings?’).”

ASX has also taken the opportunity to make some minor editorial changes to Guidance Note 8, including noting the recent and important decision in *ASIC v Big Star Energy Limited (No 3)* [2020] FCA 1442 (see footnote 111). In that case, the Federal Court held that a listed entity breached Listing Rule 3.1 and section 674(2) of the Corporations Act by announcing the sale of a significant asset without disclosing: (a) the identity of the purchaser; (b) that the entity had done no due diligence to verify the capacity of the purchaser to complete the purchase; and (c) that the entity had in fact been informed by the purchaser that it had not yet received all funding approvals required to complete the purchase. The transaction ultimately failed to complete. The court specifically rejected an argument by the entity that because the purchase was for a cash consideration, the identity of the purchaser was not material.

Mark-ups of the changes to the Guidance Notes 5 and 8 are available at:

[Guidance Note 5- mark-up](#)

[Guidance Note 8- mark-up](#)

## 2. New ASX Online for Companies training environment available

In [Listed@ASX Compliance update no. 10/20](#) dated 19 November 2020, ASX provided information on the upcoming implementation of new and changed online forms and the availability of a new training environment for listed entities to preview the forms before they come effective for use.

The new ASX Online training environment is now available for use, initially with the updated Appendix 3B online form. ASX will also provide a summary of the updates and additional training material on the Help page (sub section – “Online Forms – Resources”) in that environment. The associated updates to the emergency MS Word forms have been published as annexures to the 30 November 2020 consultation on proposed Listing Rule changes, available [here](#). ASX will inform listed entities when additional new or changed online forms become available for preview on the new training environment.

ASX Online for Companies new training environment:

<https://train2www.asxonline.com/login/>

Login information: Listed entities can login to the training environment using the same credentials for ASX Online for Companies.

Functions: The training environment is a replica of ASX Online for Companies but is not connected to the ASX market announcement platform or any other system. For example, listed entities can use the PDF or online form announcement process, but release of the announcement and resulting confirmations are simulated and nothing will be released to the ASX market announcement platform. ASX will also make available preview versions of updated or new online forms that are yet to become effective for use, and additional information in the Help page (sub section – “Online Forms – Resources”).

Availability: 24/7 from today, unless advised otherwise.

It is important that users also check the supported browser information available in the Help page.

### **3. CHES and CHES Replacement: Data Governance**

ASX has a group-wide data governance framework that applies to all data held across the organisation. ASX’s data governance arrangements for CHES are shaped by the legal and regulatory framework within which ASX Settlement operates. This includes arrangements to ensure the confidentiality, security and integrity of the data, and compliance with applicable data protection laws such as the Privacy Act 1988 (Cth).

On 4 December 2020, ASX published an information paper to explain ASX’s data governance arrangements under CHES and the CHES replacement system. The CHES replacement system is targeted to go-live in April 2023. The data governance arrangements for CHES today will continue to apply under the new system. There will only be limited updates to the data received and how it is managed under the new system. The operating rules provide the framework for the collection, use and disclosure of data received by CHES.

A copy of the ‘*Information Paper: ASX Data Governance under CHES and CHES Replacement*’ is available [here](#).

### **4. Second instalment of ASX annual listing fees FY2021- reminder**

ASX announced in [Listed@ASX Compliance Update 05/20](#) dated 1 May 2020 that annual listing fees for FY2021 would be payable in two equal instalments in July 2020 and January 2021.

Listed entities are reminded that the second instalment for annual listing fees for FY2021 will be due on Friday 29 January 2021.

Should payment not be received in full by 5.00pm AEDT on Friday 19 February 2021, ASX will suspend trading in the entity’s securities before trading commences on Monday 22 February 2021 in accordance with Listing Rule 17.6. *ASX will not waive this rule.*

Should payment still remain outstanding by 5.00pm AEDT on Friday 26 February 2021, ASX will remove the entity from the official list that day after trading closes, under Listing Rule 17.15. *ASX will not waive this rule.*

For queries on how the fee was calculated please refer to ASX Guidance Note 15 paragraph 2.4. For queries in relation to the suspension and delisting process please contact your Listings Compliance Adviser.

For all other enquiries please contact ASX Accounts Receivable via the email address [ar@asx.com.au](mailto:ar@asx.com.au).

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