

# Listed@ASX Compliance Update no. 07/21

18 August 2021

## 1. Lodge your draft notice of AGM with ASX

Almost 90% of ASX's listed entities have a balance date of 30 June and therefore would ordinarily have to hold their AGMs by 30 November each year. On 23 April 2021, in light of the COVID-19 pandemic, ASIC announced that it had extended a 'no action' position where public companies do not hold their AGMs within five months after the end of financial years that end up to 7 July 2021, but do so up to seven months after year end. For more information, please refer to [ASIC 21-082MR](#).

Under Listing Rule 15.1.7, draft notices of general meeting that contain resolutions for Listing Rules purposes must be submitted to ASX for review before they are sent to security holders. Listing Rule 15.1 provides that ASX may take 5 business days to advise whether it objects to a draft document and may extend that deadline if it needs further time to review the document.

ASX asks listed entities to bear these timing requirements in mind and allow sufficient time when they submit their draft notices of meeting for ASX to review. This is particularly important if there are a number of resolutions or complex transactions to be considered. If you will require waivers from any Listing Rules in connection with your notice of AGM, additional time should be allowed to obtain the waiver as the 5 business day period referred to above does not include the time needed to obtain a waiver. Listed entities should contact their Listings Compliance Adviser to seek advice on how long ASX needs to process a waiver request.

## 2. Annual listing fees FY2022- Reminder

Listed entities are reminded that annual listing fees for FY2022 were due on 31 July 2021.

If payment is not received in full by 5.00pm AEST Friday 20 August 2021, ASX will suspend trading in the entity's securities before trading commences on Monday 23 August 2021 in accordance with Listing Rule 17.6. ASX will not waive this rule.

Further, should payment still remain outstanding by 5.00pm AEST on Friday 27 August 2021, ASX will remove the entity from the official list that day 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).

## 3. Grouping of securities issued under employee incentive schemes

Listed entities must notify ASX of the issue of equity securities under an employee incentive scheme<sup>1</sup>:

- (a) to someone who is a member of key management personnel<sup>2</sup> ("KMP") or an associate<sup>3</sup> of a KMP, within 5 business days of the issue; or

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<sup>1</sup> Listing Rule 3.10.3A.

<sup>2</sup> Listing Rule 19.12 defines "key management personnel" as having the same meaning as in Accounting Standard AASB 124 *Related Party Disclosure*.

<sup>3</sup> The definition of "associate" can be found in Listing Rule 19.12. This definition is based on, but in some respects is broader than, the definition of "associate" in section 12 of the Corporations Act. For example, in the Listing Rules definition, the references to a body corporate in section 12(2)(a) have been replaced with references to an entity so as to capture trusts, partnerships and other unincorporated bodies and a new paragraph has been added specifying that if the primary person is a natural person, their associates include any entity they control.

(b) to someone who is not a KMP or an associate of a KMP, within 10 business days of the end of the quarter in which they were issued.

Section 2.7 of ASX Guidance Note 30 *Notifying changes in issued securities and applying for quotation of new or additional securities* (“GN 30”) notes that, for these purposes, it is acceptable for an entity to treat options issued from time to time under the same employee incentive scheme as a single class of security even though they may have different strike prices or expiry dates. It is also acceptable for an entity to treat conditional rights to equity securities issued from time to time under the same employee incentive scheme (often referred to as “performance rights”) as a single class of security even though they may have different performance conditions and performance periods.

ASX notes that some entities have previously recorded different tranches of options or conditional rights issued under employee incentive schemes as different classes of securities, due to their different exercise/ performance periods and strike prices/ performance conditions. Some of them continue to do so despite the guidance in section 2.7.

ASX has received feedback from some of these entities that they are finding it administratively burdensome to maintain multiple lines of different classes of securities and that this is complicating the summary of their capital that appears for example in any Appendix 2A, 3B or 3G they submit to ASX.

To assist in reducing this burden, upon request, ASX will update its records to reclassify options or conditional rights issued under the same employee incentive scheme as a single class of option or right (as applicable).

Please address all requests to have options or conditional rights reclassified in this way to your Listings Compliance Adviser, setting out clearly the number and class of, and ASX codes for, the various securities issued under an employee incentive schemes that you wish to group into one class.

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The Listing Rules definition also includes a provision deeming a related party of a natural person to be their associate unless the contrary is proven. This is intended to put the evidentiary burden on a person who asserts that they do not control and are not acting in concert with a related party to prove that is so.