



Consultation Response

Proposed Listing Rules changes: online forms, notification of security issues and corporate action timetables

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Consultation response – Proposed Listing Rules changes: online forms, notification of security issues and corporate action timetables

1. Introduction

On 30 November 2020, ASX Limited (“ASX”) released a [consultation paper](#) seeking feedback on proposed changes to the Listing Rules (“LR”) dealing with online forms, notification of security issues and corporate action timetables.

The consultation paper was accompanied by annexures setting out:

- ASX’s [proposed amendments to the Listing Rules](#);
- ASX’s proposed amendments to [Appendix 2A Application for quotation of securities](#), [Appendix 3A.1 Notification of dividend/distribution](#), [Appendix 3A.2 Notification of interest payment & interest rate change](#), [Appendix 3A.5 Notification of return of capital by way of in specie distribution of securities in another entity](#), [Appendix 3B Announcement of proposed issue of securities](#), and [Appendix 3G Notification of issue, conversion or payment up of unquoted equity securities](#); and
- proposed new [Appendix 3C Notification of buy-back](#) and [Appendix 3H Notification of cessation of securities](#).

2. Summary of consultation feedback

ASX received 15 submissions in response to its consultation paper, six of which were expressed to be confidential. Copies of the non-confidential submissions are available on the ASX website at: <https://www.asx.com.au/regulation/public-consultations.htm> (next to the second entry for 30/11/20 under the year 2020).

The respondents to the consultation paper comprised three industry groups (including groups representing the governance and legal industries), three share registries, five individual listed entities, three individual law firms and one information provider.

Six of the consultation submissions focussed on just one issue – the proposed introduction of a requirement to give a notice of cessation of securities under proposed new LR 3.10.3E (see section 6.1 below). Two submissions focussed on just two issues – one on LR 3.10.3E and the constraints to be imposed on listed entities under proposed new LR 12.13 around cancelling or deferring dividends (see section 6.2 below) and the other on LR 3.10.3E and the proposed changes to the definition of “employee incentive scheme” in LR 19.12 (see section 6.5 below).

The seven respondents who engaged with the larger consultation paper were mostly supportive of ASX’s proposed rule changes, although five of them also raised issues with LR 3.10.3E and two of them also raised issues with LR 12.13.

Section 6 below summarises the submissions ASX received on its proposed changes to the LR and ASX’s response to those submissions.

ASX would like to express its appreciation to all of the respondents to the consultation paper, who went to considerable effort to read, understand and provide feedback on a sizeable consultation package over a relatively contracted timetable. ASX has found the feedback most helpful in finalising and improving its package of rule changes.

3. Changes to the consultation version of the rules

In response to the consultation submissions, ASX is:

- changing LR 3.10.3E to push back the deadline for notifying ASX of a cessation of securities issued under an employee incentive scheme to employees other than key management personnel (“KMP”) and their associates:¹
 - from within 5 business days after their cessation,
 - to within 10 business days after the end of the quarter in which the cessation occurred (see section 6.1 below);
- making corresponding changes to LR 3.10.3A to push back the deadline for notifying ASX of an issue of securities under an employee incentive scheme to employees other than KMP and their associates:²
 - from within 5 business days after their issue,
 - to within 10 business days after the end of the quarter in which they were issued,

and to LR 3.10.3B to push back the deadline for notifying ASX of a conversion of convertible securities issued under an employee incentive scheme to employees other than KMP and their associates:³

 - from within 5 business days after their conversion,
 - to within 10 business days after the end of the quarter in which the conversion occurred (see section 6.1 below);
- changing LR 2.8.6 to push back the deadline for applying for quotation of securities issued under an employee incentive scheme:
 - from within 5 business days after their issue,
 - to within 10 business days after the end of the quarter in which they were issued or, if they are subject to restrictions on transfer, within 10 business days of the end of the quarter in which those restrictions ceased to apply (see section 6.1 below),

and changing LR 2.8.3 to push back the deadline for applying for quotation of securities issued as a result of a conversion of convertible securities issued under an employee incentive scheme:

 - from within 5 business days after their conversion,
 - to within 10 business days after the end of the quarter in which they were converted (see section 6.1 below);
- not proceeding with the proposed new LR 12.13 and instead is making some relatively minor changes to LR 3.21 and 3.22 (explained in further detail in section 6.2 below);
- changing the final entry in the table in LR 3.8 to require a listed entity that has conducted a buy-back to lodge with ASX an Appendix 3H *Notice of cessation of securities*:
 - in the case of a minimum holding buy-back, within 5 business days of the completion of the buy-back, and

¹ The deadline in LR 3.10.3E for notifying ASX of a cessation of securities issued under an employee incentive scheme to KMP and their associates is unchanged at 5 business days after their cessation.

² The deadline in LR 3.10.3A for notifying ASX of an issue of securities under an employee incentive scheme to KMP and their associates is unchanged at 5 business days after their issue.

³ The deadline in LR 3.10.3B for notifying ASX of a conversion of convertible securities issued under an employee incentive scheme to KMP and their associates is unchanged at 5 business days after their conversion.

- in all other cases, within 5 business days of giving ASX the final buy-back notice (see section 6.4 below);
- modifying the note to the definition of “employee incentive scheme” in LR 19.12 (as set out in section 6.5 below); and
- making some minor drafting improvements to LR 2.4, 2.8, 3.8A, 3.10.3, 3.10.3A, 3.10.3B, 3.10.3C, 3.10.3D, 3.30.3E and Appendix 6A (including to the explanatory notes to those rules) to clarify how they fit together with the timetables and form requirements for corporate actions in LR Appendix 6A and with each other.

For completeness, while not originally proposed in the consultation paper, ASX is also:

- deleting LR 3.10.2,⁴ which requires a listed entity to notify ASX of the details of a call to be made on its partly paid securities via an Appendix 3A.6 (this requirement is now addressed in the new LR 3.10D);
- modifying the timetable for equal access scheme buy-backs in section 11 of Appendix 7A to make it clear that the 15 business day offer period is a minimum period rather than a fixed period; and
- updating LR Appendix 3A.6 *Notification of call/instalment on quoted partly paid equity securities* to incorporate some minor drafting improvements.

4. Final rule changes

Accompanying this consultation response are the following annexures:

- A. the [final changes ASX is making to the Listing Rules](#) addressing the feedback received in consultation submissions;
- B. a [mark-up comparing the final rule changes to the consultation version](#);

and the final versions of the following new or amended LR Appendices:

- C. [Appendix 2A Application for quotation of securities](#);
- D. [Appendix 3A.1 Notification of dividend/distribution](#);
- E. [Appendix 3A.2 Notification of interest payment & interest rate change](#);
- F. [Appendix 3A.5 Notification of return of capital by way of in specie distribution of securities in another entity](#);
- G. [Appendix 3A.6 Notification of call/instalment on quoted partly paid equity securities](#);
- H. [Appendix 3B Announcement of proposed issue of securities](#);
- I. [Appendix 3C Notification of buy-back](#);
- J. [Appendix 3G Notification of issue, conversion or payment up of unquoted equity securities](#); and
- K. [Appendix 3H Notification of cessation of securities](#).

⁴ While it was not necessarily apparent on the face of LR 3.10.2, the Appendix 3A.6 was only used to notify ASX of the payment of calls/instalments on quoted partly paid securities. The timetables in sections 3 and 4 of Appendix 6A governing payment of calls/instalments on quoted partly paid securities specify when the Appendix 3A.6 is required to be given to ASX.

5. Effective date and transitional arrangements

The changes to the consultation version of the LR amendments mentioned in section 3 above have necessitated some further changes to the online and MS Word versions of the Appendices 2A, 3A.1, 3A.2, 3B, 3C, 3G and 3H forms and to the MS Word version of the Appendix 3A.6.

To cater for these changes, ASX is pushing back the effective date for the LR amendments and the release date for the new or updated Appendices from the date originally proposed in the consultation paper of 20 March 2021 to 5 June 2021.

Subject to the receipt of the necessary regulatory approvals, the final rule changes and the changes to the various LR Appendices mentioned above will come into effect on 5 June 2021, or such later date as ASX may notify to the market.

The table below summarises the transitional arrangements that will apply to the new or changed Appendices:

Appendix	Current form status	Change from effective date	Transition arrangements
Appendix 3A.1 – Notification of dividend/distribution	Existing online form	Updated online form	Issuers continue to use the online form, noting there will be some changes to the form.
Appendix 3A.2 – Notification of interest payment & interest rate change	Existing online form	Updated online form	Issuers continue to use the online form, noting there will be some changes to the form.
Appendix 3A.5 – Notification of return of capital by way of in-specie distribution of securities in another entity	Existing MS Word form	Updated MS Word form	For any announcement made after the effective date about a new in-specie distribution, issuers should use the updated version of the MS Word form.
Appendix 3A.6 – Notification of payment of call/instalment on partly paid securities	Existing MS Word form	Updated MS Word form	For any announcement made after the effective date about a new call/instalment due on partly paid securities, issuers should use the updated version of the MS Word form.
Appendix 2A – Application for quotation of securities	Existing MS Word form	New online form	If an issuer has already announced a proposed issue of quoted securities via an Appendix 3B prior to the effective date, they should confirm the issue using the existing MS Word version of Appendix 2A. Otherwise, issuers should use the new online form.
Appendix 3B – Proposed issue of securities	Existing online form	Updated online form	Issuers continue to use the online form, noting there will be some changes to the form.

Appendix 3C – Notification of buy-back	Existing MS Word forms – Appendices 3C, 3D, 3E, 3F	New online form – Appendix 3C	<p>If an issuer has already announced a buy-back prior to the effective date, they should continue to provide notifications of variations to the buy-back terms and daily and final buy-back notifications using the existing MS Word versions of Appendices 3D, 3E and 3F.</p> <p>An issuer who announces a new buy-back after the effective date should use the new Appendix 3C online form to announce the buy-back and to provide notifications of variations to the buy-back terms and daily and final buy-back notifications.</p>
Appendix 3G – Notification of issue, conversion or payment up of unquoted equity securities	Existing MS Word form	New online form	<p>If an issuer has already announced a proposed issue of unquoted securities via an Appendix 3B prior to the effective date, they should confirm the issue using the existing MS Word version of Appendix 3G.</p> <p>Otherwise, issuers should use the new online form.</p>
Appendix 3H – Notification of cessation of securities	N/A	New online form	Issuers to start using the new online form.

6. Specific consultation feedback and ASX's response

This section outlines the feedback ASX received on its proposed LR changes and ASX's response. It has been ordered by reference to the number and strength of the submissions received by ASX.

6.1 LR 3.10.3E and its application to employee incentive schemes

As can be inferred from section 2 above, proposed new LR 3.10.3E attracted the most feedback from respondents, receiving comments from 13 of the 15 respondents to the consultation.

If adopted in its consultation form, LR 3.10.3E would have required a listed entity to notify ASX within 5 business days of the cessation of any equity securities or quoted debt securities not otherwise notified to ASX under another LR using an Appendix 3H, a new LR Appendix designed to capture relevant information about the cessation of securities.

The proposed introduction of LR 3.10.3E and Appendix 3H was aimed at ensuring that the market has reasonably up-to-date information about the number of securities a listed entity has on issue. Currently, listed entities are required to provide ASX with timely information about the issuance of securities, but outside of cancellations due to buy-backs, have no similar obligation to provide ASX with timely information about securities that lapse or otherwise cease to exist.

Submissions	ASX Response
<p>Nine of the 15 consultation respondents objected to proposed new LR 3.10.3E. They argued that it would create a significant administrative burden for listed entities, which would materially outweigh the incremental benefit to the market of the disclosures in question.</p> <p>In all cases, the example they proffered was the cancellation of equity awards under employee incentive schemes when employees leave the entity. The respondents noted that many listed entities used equity awards under employee incentive schemes as part of their general remuneration arrangements. Many also had substantial numbers of employees participating in those schemes. They argued, with considerable force, that requiring these entities to lodge an Appendix 3H each time an employee leaves the organisation recording the pro forma cessation of their equity awards under an employee incentive scheme within 5 business days of the cessation would give rise to a significant administrative burden.</p> <p>Three of the nine respondents who objected to LR 3.10.3E suggested modifying the rule to allow batched reporting of the cessation of securities on</p>	<p>ASX acknowledges the concerns about the administrative burden LR 3.10.3E may create in relation to the cessation of securities issued under employee incentive schemes and has amended the rule to allow, with one exception, notices of the cessation of securities issued under an employee incentive scheme to be made on a quarterly basis, within 10 business days of the end of the quarter in which the cessation occurs.</p> <p>The one exception is that ASX believes that the market generally would want to receive information about the cessation of equity awards held by KMP or their associates on a timelier basis than quarterly. ASX has therefore retained the 5 business day deadline for giving notice of the cessation of securities issued under employee incentive schemes to KMP or their associates.</p> <p>The final version of LR 3.10.3E requires a listed entity to notify ASX of:</p> <p><i>Details of the cessation of:</i></p> <p>(a) <i>any securities issued under an employee incentive scheme:</i></p> <p>(i) <i>to key management personnel or an associate, within 5 business days of their cessation;</i></p>

Submissions	ASX Response
<p>a periodic basis (monthly, quarterly or half yearly) rather than within 5 business days.</p> <p>Four of the remaining six respondents⁵ expressly supported, or stated that they had no comment on or objection to, the changes to LR 3.10.3E and Appendix 3H. However, all four commented that the 5 business day lodgement deadline may be too tight a timeframe to notify some types of security cessation. Again, the example they proffered was the cancellation of equity awards under employee incentive schemes when employees leave the entity. One of those respondents suggested moving to a quarterly reporting cycle, and one to a monthly reporting cycle, for notifications under LR 3.10.3E.</p>	<p>(ii) <i>to someone who is not key management personnel or an associate, within 10 business days of the end of the quarter in which the cessation occurred;</i></p> <p>(b) <i>any other equity securities not otherwise notifiable to ASX under rule 3.8A, within 5 business days of their cessation; or</i></p> <p>(c) <i>any quoted debt securities, within 5 business days of their cessation.</i></p> <p><i>The notification must be in the form of, or accompanied by, an Appendix 3H.</i></p>
<p>In a related matter, two of the nine respondents who objected to LR 3.10.3E, and one of respondents who supported LR 3.10.3E, noted the introduction in December 2019 of the requirement in LR 3.10.3A to notify ASX within 5 business days of an issue of equity securities under an employee incentive scheme using an Appendix 2A (for quoted securities) or an Appendix 3G (for unquoted securities). They commented that LR 3.10.3A had also given rise to a substantial administrative burden for listed entities, due to the frequency of notifications required as incoming employees were granted equity awards under employee incentive schemes.</p> <p>ASX has received similar feedback from listed entities outside of this consultation.</p>	<p>ASX acknowledges the administrative burden caused by the requirements introduced in December 2019 in:</p> <ul style="list-style-type: none"> • LR 3.10.3A to notify ASX within 5 business days of the issue of equity securities under an employee incentive scheme; and • LR 3.10.3B to notify ASX within 5 business days of the conversion of convertible securities, as it applies to options and performance rights granted under an employee incentive scheme. <p>To reduce this administrative burden, ASX is making corresponding changes to LR 3.10.3A and 3.10.3B to those it has made to the consultation version of LR 3.10.3E.</p> <p>The change to LR 3.10.3A will require a listed entity to notify ASX of:</p> <p><i>Details of an issue of equity securities under an employee incentive scheme:</i></p> <p>(a) <i>to key management personnel or an associate, within 5 business days of the issue; or</i></p> <p>(b) <i>to someone who is not key management personnel or an associate, within 10 business days of the end of the quarter in which they were issued.</i></p> <p><i>If the securities are intended to be immediately quoted on ASX, the notification must be in the form of, or accompanied by, an Appendix 2A. The</i></p>

⁵ One of the remaining two respondents expressed its general agreement with all of the proposed LR changes without expressing any specific views about LR 3.10.3E. The other made no comments in relation LR 3.10.3E.

Submissions

ASX Response

Appendix 2A must be received by ASX no later than midday (Sydney time) at least one business day prior to the intended date for quotation of the securities.

Otherwise, the notification must be in the form of, or accompanied by, an Appendix 3G.

The change to LR 3.10.3B will require a listed entity to notify ASX of:

Details of the conversion of any convertible securities:

- (a) if the convertible securities are quoted, in accordance with the timetable in section 5 of Appendix 6A;*
- (b) if the convertible securities are not quoted and were issued under an employee incentive scheme:
 - (i) to key management personnel or an associate, within 5 business days of their conversion;*
 - (ii) to someone who is not key management personnel or an associate, within 10 business days of the end of the quarter in which the conversion occurred; and**
- (c) if the convertible securities are not quoted and rule 3.10.3B(b) does not apply, within 5 business days of their conversion.*

If the underlying securities are intended to be quoted on ASX, the notification must be in the form of, or accompanied by, an Appendix 2A. The Appendix 2A must be received by ASX no later than midday (Sydney time) at least one business day prior to the intended date for quotation of the securities.

Otherwise, the notification must be in the form of, or accompanied by, an Appendix 3G.

These changes will continue to provide the market with timely notifications (ie within the currently mandated 5 business days) of:

- the issue of securities to KMP (or their associates) under an employee incentive scheme under LR 3.10.3A; and
- the conversion by KMP (or their associates) of convertible securities issued to them under an employee incentive scheme under LR 3.10.3B.

Submissions	ASX Response
	<p>However, the changes will allow such notifications to be made for other employees on a batched basis each quarter. For many listed entities, this should result in a significant reduction in the number of notifications they have to give under LR 3.10.3A and 3.10.3B.</p> <p>ASX is also proposing to modify the deadlines for applying for quotation of securities in LR 2.8 to require an application for quotation to be made (relevantly):</p> <p><i>2.8.3 If unquoted convertible securities are converted into securities in a class of securities that is already quoted, or that is intended to be quoted, on ASX:</i></p> <p><i>(a) <u>if the convertible securities were issued under an employee incentive scheme, within 10 business days of the end of the quarter⁶ in which the conversion occurred;</u> or</i></p> <p><i>(b) otherwise, within 5 business days of their conversion.</i></p> <p><i>2.8.6 <u>If the securities are being issued under an employee incentive scheme, within 10 business days of the end of the quarter⁷ in which they were issued or, if they are subject to restrictions on transfer, within 10 business days of the end of the quarter in which those restrictions ceased to apply.</u> [Emphasis added]</i></p> <p>As is the case for all applications for the quotation of securities, an application for quotation of securities under LR 2.8.3 or 2.8.6 will have to be received by ASX no later than midday (Sydney time) at least one business day prior to the intended date for quotation of the securities.⁸</p>

⁶ ASX does not consider it necessary to replicate the structure of LR 3.10.3B in LR 2.8.3 and require applications for the quotation of securities resulting from the conversion of convertible securities issued under an employee incentive scheme to KMP or their associates to be lodged with ASX within 5 business days of their conversion. In ASX's view, investors and their advisers need timely information about the number and type of equity securities KMP or their associates receive as a result of converting convertible securities issued to them under an employee incentive scheme (and hence the five business day deadline for notifying those conversions under LR 3.10.3B). The point at which the entity applies for the quotation of those securities under LR 2.8.3 is largely a matter between ASX, the entity and the holder of the securities, and is unlikely to be of significant interest or concern to investors or their advisers.

⁷ Again, ASX does not consider it necessary to replicate the structure of LR 3.10.3A in LR 2.8.6 and require applications for the quotation of securities issued under an employee incentive scheme to KMP or their associates to be lodged with ASX within 5 business days of their issue. In ASX's view, investors and their advisers need timely information about the number and type of equity securities issued to KMP or their associates under an employee incentive scheme (and hence the five business day deadline for those notifications under LR 3.10.3A). The point at which the entity applies for the quotation of those securities under LR 2.8.6 is largely a matter between ASX, the entity and the holder of the securities, and is unlikely to be of significant interest or concern to investors or their advisers.

⁸ See the second last paragraph to existing LR 2.8.

Submissions	ASX Response
	<p>The changes mentioned above to LR 2.8.3 and 2.8.6 will have the added advantage of eliminating the need for listed entities to apply for, and for ASX to grant, the approvals currently referred to in the final paragraph of LR 2.8 (“LR 2.8 Batch Approvals”). An LR 2.8 Batch Approval allows the recipient to batch applications for the quotation of securities issued under an employee incentive scheme and lodge them with ASX on a periodic basis (usually monthly or quarterly).⁹ The changes to LR 2.8.3 and 2.8.6 above will allow all listed entities to batch applications for the quotation of securities received under an employee incentive scheme and lodge them with ASX on a quarterly basis without the need to seek an LR 2.8 Batch Approval. Consequently, when these changes to LR 2.8.3 and 2.8.6 come into effect, the final paragraph of LR 2.8 will be deleted and ASX will no longer grant any further LR 2.8 Batch Approvals. It will also revoke all existing LR 2.8 Batch Approvals.</p>

6.2 Proposed new LR 12.3 restricting the cancellation or deferral of dividends, distributions and interest payments

Proposed new LR 12.3 was the other issue that attracted significant feedback from respondents, receiving comments from 6 of the 15 respondents to the consultation.

If adopted in its consultation form, LR 12.3 would have provided that a listed entity that has given an Appendix 3A.1 or Appendix 3A.2 to ASX announcing a dividend, distribution or interest payment on a quoted security and nominating a record date for determining the security holders entitled to the dividend, distribution or interest payment and the date on which it will be paid, may only change the amount and/or the date for payment of the dividend, distribution or interest payment if:

- it would be contrary to law to pay the dividend, distribution or interest payment on the announced date; or
- the entity has given ASX notice of the change before noon (Sydney time) on the business day prior to the ex date specified in the Appendix 3A.1 or Appendix 3A.2 (as applicable).

⁹ The final paragraph of LR 2.8 currently states:

However, in the case of an employee incentive scheme that involves frequent issues of securities, ASX may agree that an application for quotation of such securities may be made on a periodic basis rather than when they are issued. If ASX does agree to this, the entity must still comply with Listing Rule 3.10.3A in relation to each issue.

The reason for this concession is explained in section 4.3 of Guidance Note 30 *Notifying an Issue of Securities and Applying for their Quotation*, which states:

“Entities that have frequent issues of relatively small numbers of securities under an employee incentive scheme may apply to ASX for approval to apply for quotation (and consequently pay the minimum additional listing fee) on a periodic basis rather than when those securities are issued. If ASX agrees, the entity must still comply with its obligation to announce such issues to the market within 5 business days of when they are made. Entities wishing to take advantage of this concession should discuss it with their home branch.”

Proposed new LR 12.3 was aimed at reducing the market disruption caused when a listed entity cancels or defers a previously announced dividend, distribution or interest payment, especially if the cancellation or deferral occurs after the entity's securities have traded ex the dividend, distribution or interest payment.

Submissions	ASX Response
<p>Three respondents specifically objected to the proposed new LR 12.3. They commented that there can be many reasons why a listed entity might want to cancel, defer or reduce a dividend, and it is important that listed entity boards have the ability to do so if the circumstances require it. They noted that the gap between the record date for a dividend and the payment date can be two to three months and that much can change in that time, as recent events have amply demonstrated. Further, while ASX had provided in proposed LR 12.13 for dividends to be cancelled or deferred where required by law, circumstances can change such that it is prudent for a board to cancel or defer a dividend, even if the entity is lawfully able to pay it. Further, certain entities (especially those that are prudentially regulated) may be subject to regulatory requests or guidance to cancel, defer or reduce a dividend, which may not have the force of law but which it would be unwise for the entity not to follow. The objecting respondents suggested that where an entity's board has made a judgement that it is in the best interests of the entity to cancel, defer or reduce a previously announced dividend, the entity should provide appropriate disclosure to the market of its changed circumstances and the reasons for cancelling, deferring or reducing the dividend.</p> <p>In contrast, three other respondents expressed their support for, or stated that they had no comment on or objection to, the proposed new LR 12.3.¹⁰</p>	<p>ASX acknowledges the concerns expressed in relation to proposed LR 12.13 and has decided not to proceed with that rule change.</p> <p>Instead ASX has decided to:</p> <ul style="list-style-type: none"> • expand LR 3.21(a)(iii) to require a listed entity to notify ASX immediately if it “<i>makes a decision to cancel, defer or reduce a dividend or distribution on a quoted security that it has previously announced it will pay</i>”; • add a paragraph to the end of LR 3.21 stating: <i>An announcement under rule 3.21(a)(iii) must include an explanation, satisfactory to ASX, of the entity's reasons for cancelling, deferring or reducing the dividend or distribution.</i> • likewise expand LR 3.22(a)(iii) to require a listed entity to notify ASX immediately if it “<i>makes a decision to cancel, defer or reduce an interest payment on a quoted debt security or quoted convertible debt security that it has previously announced it will pay</i>”; and • add a paragraph to the end of LR 3.22 stating: <i>An announcement under rule 3.22(a)(iii) must include an explanation, satisfactory to ASX, of the entity's reasons for cancelling, deferring or reducing the interest payment.</i>
<p>One respondent suggested that it would be helpful for ASX to clarify in the notes to LR 3.21 how the proposed new rules constraining the cancellation or deferral of dividends or other distributions would operate in the context of listed trusts who, for tax reasons, often announce an estimated distribution ahead of determining the amount of their final distribution.</p>	<p>ASX has updated the note to LR 3.21¹¹ to read:</p> <p><i>Note: The decision to pay a dividend or distribution on a quoted security is notified to ASX via an Appendix 3A.1.</i></p> <p><i>If the dividend or distribution is subsequently cancelled, the cancellation must be notified to ASX under rule 3.21(a)(iii) using the ‘cancel’ function in the Appendix 3A.1. The required explanation of the entity's reasons for cancelling the dividend or distribution must be included in the ‘Reason for</i></p>

¹⁰ A fourth respondent expressed its general agreement with all of the proposed LR changes without expressing any specific views about LR 3.21.

¹¹ ASX has also updated the note to LR 3.22 so that it is consistent with the first three paragraphs of the new note to LR 3.21.

Submissions	ASX Response
	<p><i>cancellation' field in the Appendix 3A.1 or in a separate announcement to the market.</i></p> <p><i>If payment of the dividend or distribution is subsequently deferred or the amount of the dividend or distribution is subsequently reduced, that should be notified to ASX under rule 3.21(a)(iii) using the 'update' function in the Appendix 3A.1. The required explanation of the entity's reasons for deferring or reducing the dividend or distribution must be included in the 'Reason for update' field in the Appendix 3A.1 or in a separate announcement to the market.</i></p> <p><i>If an entity notifies ASX of the estimated amount of a dividend or distribution in an Appendix 3A.1, it must notify ASX of the final amount of the dividend or distribution under rule 3.21(c). If the entity decides not to proceed with the estimated dividend or distribution (ie the final amount of the dividend or distribution is nil), that should be notified using the 'cancel' function in the Appendix 3A.1. Otherwise, any differences between the estimated dividend or distribution and the final dividend or distribution (including any changes to the payment date) should be notified using the 'update' function in the Appendix 3A.1.</i></p> <p><i>To be clear, rule 3.21(a)(iii) and the requirement for a notice under that rule to include an explanation satisfactory to ASX of the entity's reasons for cancelling, deferring or reducing a previously announced dividend or distribution only applies to actual dividends or distributions that an entity has announced it will pay. It does not apply to estimated dividends or distributions. That being said, if an entity subsequently decides not to pay an estimated dividend or distribution, or the final dividend or distribution is materially different to the estimated dividend or distribution, an explanation of the reasons for the cancellation or difference may be appropriate or required under rule 3.1.</i></p>

6.3 The changes proposed to the corporate actions timetables in Appendix 7A

Submission	ASX Response
<p>Four respondents expressed their strong support for the proposed amendments to the corporate action timetables in Appendix 7A allowing an additional 2 business days for an entity to announce the results of certain corporate actions. A fifth respondent indicated that it had no comments on those amendments.</p> <p>No respondent spoke against the proposed amendments.</p>	<p>ASX appreciates the support and is proceeding with the proposed amendments to the corporate action timetables.</p>
<p>One respondent observed that it was their interpretation that an issuer may announce the results of a corporate action prior to the final issue of securities under a corporate action, provided the announcement and the issue both occurred within the 5 business day deadline. They asked ASX to confirm that this is the case.</p>	<p>ASX will provide this confirmation in its next update to Guidance Note 30 <i>Notifying an Issue of Securities and Applying for their Quotation</i>.</p>
<p>One respondent noted the reduction in time provided for the announcement of the results of, and the issuance of shares under, a security purchase plan from 7 business days, to 5 business days, after the offer closing date. It observed that while the majority of offers do not require the current 7 business day window, complex or large offers have been known to require the additional time and therefore flexibility may be required for some transactions.</p>	<p>ASX notes the observation and would encourage any listed entity or registry confronted with such a situation to engage with ASX at an early stage to see what flexibility can be afforded.</p>

6.4 LR 3.8A and the new Appendix 3C Notification of buy-backs

Submission	ASX Response
<p>Two respondents expressed concerns about ASX's proposed consolidation of the current Appendix 3C, Appendix 3D, Appendix 3E and Appendix 3F forms into a single new Appendix 3C <i>Notification of buy-back</i> that covers all of the notifications required in relation to buy-backs. They expressed a preference for the four separate forms to be retained.</p> <p>One respondent commented that the consolidated form would detract from the ability for users of ASX's announcement service to search or scan for information about the different points of notification – ie the initial, amended,</p>	<p>ASX is proceeding with the proposed consolidation of the current Appendix 3C, Appendix 3D, Appendix 3E and Appendix 3F forms into a single new Appendix 3C.</p> <p>In relation to the comments from the first respondent, the title header to each announcement, which is set out in the text that appears in the description of the announcement on ASX's announcement service, will clearly identify whether the announcement is an update or cancellation. Additionally, the announcement type will identify the type of buy-back the subject of an initial</p>

Submission	ASX Response
<p>daily or final notifications – by searching or scanning for the different form numbers or the different titles of the individual forms.</p> <p>The other respondent commented that the current Appendices 3C, 3D, 3E and 3F are all used at very specific points in a buy-back. They noted that entities would generally only use one section of a form at any point in time and they did not see any benefit to users in combining the forms. They also expressed the view that it may be more efficient if the Appendix 3E daily buy-back notification, in particular, was retained as a paper-based form, to facilitate the current market practice of brokers preparing drafts of the form for listed entities in MS Word format, which they then send to listed entities to check and lodge with ASX.</p>	<p>announcement and, for an update, if the update is a daily buy-back notice or a final buy-back notice.</p> <p>In relation to the comments from the second respondent , having four separate forms for each type of buy-back notification would significantly complicate the straight through processing of the forms and their linkage in ASX’s and data consumers’ back office systems.</p> <p>Further, having one of the buy-back forms as a paper-based form would run directly counter to the aims of ASX’s straight through processing project, namely to replace paper-based forms with smart electronic forms that:</p> <ul style="list-style-type: none"> • simplify and streamline the production of market notifications by issuers (including by pre-populating data for issuers, where possible); • include validation to reduce errors and ensure that all required information is included; and • convert the data in the forms to a digital format that can be consumed electronically by ASX and other data consumers without the need for it to be re-keyed. <p>As is the case for other online forms, should an entity announce an ‘update’ to a buy-back notification, ASX will pre-populate the information from earlier announcements (for example, in the case of a daily or final buy-back notice, the information from the initial buy-back notice in Parts 1, 2, and 3 of the Appendix 3C). In ASX’s view, having all of the earlier information available in one form will assist readers to understand the information, rather than having to piece together multiple announcements.</p> <p>ASX also notes that ASX Online currently has the functionality for listed entities to authorise users outside their organisation (e.g. brokers, lawyers and other advisers) to create online forms as drafts (refer Guidance Note 20 ASX Online). The listed entity can check the draft form online, if necessary amend it online, and then release it to the market without having to re-key any of the data in the draft form.</p>

Submission	ASX Response
<p>One respondent commented on ASX’s proposal to replace the current requirement in LR 3.8A¹² that an entity lodge with ASX a copy of the Form 484 filed with ASIC in relation to a cancellation of securities under a buy-back at the same time as that form is lodged with ASIC, with a requirement that an entity give ASX an Appendix 3H “within 5 business days of the cancellation of securities bought back”.</p> <p>The respondent noted that a Form 484 must be lodged with ASIC within 28 days of a cancellation of securities. Under section 257H(3) of the <i>Corporations Act</i>, shares are cancelled ‘immediately after the registration of the transfer to the company of the shares bought back’. This means that when an entity is undertaking an on-market buy-back and is potentially in the market every day, securities bought back are effectively being cancelled daily as and when they settle on a T+2 basis.</p> <p>The respondent commented that ASX’s proposed change to LR 3.8A could therefore require an entity to lodge an Appendix 3H every five 5 business days when it is actively buying back stock on market.</p> <p>The respondent expressed a preference for LR 3.8A to require an entity to lodge an Appendix 3H with ASX no later than five business days after the relevant Form 484 is filed with ASIC, instead of within five business days of the cancellation.</p>	<p>ASX does not consider it appropriate for the market to have to wait for a period of up to 28 days for a Form 484 to be filed with ASIC, and then a further five business days for an Appendix 3H to be lodged with ASX, before the market is notified of a cancellation of securities in a buy-back.</p> <p>ASX acknowledges the difficulty caused by section 257H(3) and has addressed that issue by amending LR 3.8A to require the Appendix 3H <i>Notice of cessation of securities</i> to be given to ASX:</p> <ul style="list-style-type: none"> • in the case of a minimum holding buy-back, within 5 business days of the completion of the buy-back; and • in all other cases, within 5 business days of the entity giving ASX the final notice for the buy-back.

¹² See the final cell of the table in Listing Rule 3.8A.

6.5 The definition of “employee incentive scheme” in LR 19.12

Submission	ASX Response
<p>Two respondents expressed their agreement with the clarificatory amendments ASX was proposing to the definition of “employee incentive scheme” in LR 19.12.</p> <p>One respondent, however, raised concerns with the note that ASX was proposing to add to the definition of “employee incentive scheme” in LR 19.12 that:</p> <p><i>“A scheme can also be an employee incentive scheme for the purposes of the Listing Rules even if a participating employee or director is required to pay full price for the issue or acquisition of equity securities under the scheme (the “incentive” in such a case being the provision of an equity stake in the entity that aligns the interests of the employee or director with the interests of the entity and its other security holders and that incentivises the employee or director to act to further those interests).</i></p> <p><i>Hence, a non-executive directors’ share purchase plan is an employee incentive scheme for the purposes of the Listing Rules.”</i></p> <p>It suggested this new note was “not clear” and “a retrograde step”.</p>	<p>The primary purpose ASX was seeking to achieve with the new note to the definition of “employee incentive scheme” in LR 19.12 was to inform listed entities of its view that most non-executive director share purchase plans are employee incentive schemes for the purposes of the Listing Rules.</p> <p>ASX has re-written the note in question to shorten and simplify it. It now reads:</p> <p><i>“Most non-executive director security purchase plans are employee incentive schemes for the purposes of the Listing Rules. This applies even where the plan provides for securities to be purchased on-market (and therefore at a fair market price) and a participating director is ultimately required to pay the full purchase price for the securities purchased on their behalf (for example, by periodic deduction to their director’s fees).”</i></p>

6.6 Miscellaneous comments

Submission	ASX Response
<p>One respondent noted that there appeared to be an inconsistency between the first and penultimate paragraphs of the notes to this rule and suggested that ASX review the drafting of the notes.</p>	<p>ASX has re-written the notes in question.</p>

Submission	ASX Response
<p>One respondent recommended that ASX alter the proposed Appendix 2A to relocate Parts 2.2h.1 – 2.2h.1.d, 2.2h.2, 2.2h.3, 3A.1 and 3A.2 into Part 1, so that key information is located on the first or second page.</p>	<p>ASX is happy with the proposed lay out of the Appendix 2A. ASX has tried to standardise, as much as it can, Part 1 of each online form so that it is familiar to users. The subsequent Parts of the online form are presented so that relevant information is grouped together or follows a logical order. The PDF announcement produced upon the submission of an online form, which is displayed on ASX’s information services, provides a summary first page, which incorporates key information from relevant parts of the form. For the Appendix 2A, this will include why the securities are being issued and the number of securities to be quoted.</p>
<p>The same respondent observed that they sometimes pick up discrepancies or a lack of adequate information in completed Appendix 2As, especially in relation to pricing. They recommended that listed entities be directed to provide better pricing information to the market in the current Part 4.2d, and to provide a clearer breakdown where there are multiple purposes for the issue of securities (including the pricing attributable to each component in the breakdown).</p>	<p>ASX notes the observation and would encourage any person who considers that a listed entity has omitted to provide material information in a filing with ASX to bring that matter to ASX’s attention so that ASX can take the appropriate action.</p> <p>That said, the Appendix 2A is currently available as an MS Word form only. Once it is introduced as an online form, the issues raised should be reduced, as the online form will require completion of certain questions designated as mandatory and have data validations to ensure appropriate answers are provided to certain questions. In addition, the summary of securities on issue in Part 4 will be automatically calculated and presented by ASX, based on the current records maintained by ASX and the changes announced by the listed entity in the form.</p>
<p>One respondent commented that it would be helpful to clarify that where an entity issues unquoted convertible securities, it will generally have to file an Appendix 3B when it proposes to issue the securities, as well as an Appendix 3G when it actually issues the securities. The respondent observed that they had seen mixed practice on this.</p>	<p>ASX agrees and is updating the notes to LR 3.10.3 to state:</p> <p><i>Rule 3.10.3 requires an entity to notify certain proposed issues of securities. When and if the securities in question are issued, the entity will need to separately notify ASX of their actual issue under rule 3.10.3C. This notification will take the form of an Appendix 2A, if the securities are intended to be quoted on ASX, or an Appendix 3G, if the securities are not intended to be quoted on ASX.</i></p> <p>ASX will also clarify this issue in its next update to Guidance Note 30 <i>Notifying an Issue of Securities and Applying for their Quotation</i>.</p>

Submission	ASX Response
<p>One respondent commented:</p> <p><i>“... the Appendix 3G Worksheet (Annexure B to Guidance Note 21) that we are required to complete after lodging an Appendix 3G for the issue of performance rights to show that we have not breached our 15% placement capacity. We do not use our placement capacity in relation to the issue of performance rights and the subsequent vesting of all or some of those rights into ordinary shares. Satisfaction of the rights which vest is met by shares allocated from the Employee Share Trust (which are purchased on market) or by shares purchased on market. There is no provision in the Appendix 3G to so indicate and advise that the 15% placement capacity will not be used, and therefore not be obliged to complete the Worksheet (which is a relatively time-consuming task).”</i></p>	<p>ASX acknowledges the issue and will update the notes to the relevant data fields in Appendices 2A, 3B and 3G to make it clearer that listed entities are only required to give to ASX completed work sheets in the form of Annexures B and C of Guidance Note 21 confirming an issue is within their placement capacity under LR 7.1 and 7.1A.2, where they are in fact relying on their placement capacity to issue the securities in question.</p>
<p>One respondent commented that some listed entities and their advisers are not aware that ASX’s online forms can be filled out online in draft in advance, including by advisers. They suggested that it would be helpful for this to be brought to the attention of entities and their advisers.</p> <p>As if to underline this point, three other respondents commented that the online forms had resulted in duplication of effort and cost, with advisers preparing draft forms using the emergency MS Word version of the forms, forwarding those to clients for checking, and then the client re-keying the information into the online version of the form.</p>	<p>As mentioned above, ASX Online has the functionality for listed entities to authorise users outside their organisation (e.g. brokers, lawyers and other advisers) to draft and save any of the online forms within ASX Online. The listed entity can check the draft form online, if necessary amend it online, and then release it to the market without having to re-key any of the data in the draft form.</p> <p>ASX has published webinars and guides on ASX Online for the information of users about the online form functionality. This material is available from the “Help” page, “Online Forms – Resources” section of ASX Online.</p> <p>ASX will review these webinars and guides to see if they need updating to address this issue. ASX will also add commentary to Guidance Note 20 ASX Online further explaining this functionality.</p>

Submission	ASX Response
<p>One respondent commented that entities and their advisers following the process in the previous point would fill out the MS Word version of the forms in draft and then when the listed entity went to re-key the data into the online form, it would encounter difficulties because the MS Word versions did not exactly reconcile with the online version or the online version had unexpected word / character limits that had not been factored into the draft.</p> <p>It commented that it would be helpful if the paper forms and the online ones exactly reconciled and, if there are word/character limits, that these are specified in brackets in the MS Word version of the forms so that everyone was aware of them in advance.</p>	<p>ASX would encourage listed entities and their advisers to use the functionality mentioned in the previous point to prepare their draft forms online rather than using the MS Word emergency version of the form. This will avoid the issue identified by the respondent.</p> <p>ASX would note that it is inevitable that there will be some minor differences (both as to presentation and as to content) between the online versions and the emergency MS Word versions of the various Listing Rule forms, given the smart nature of the online forms and the static nature of the MS Word forms. ASX endeavours to keep those differences to a minimum.</p> <p>The character and format limits imposed in the online forms are mostly intentional and are designed to satisfy international standards for financial data capture and dissemination.</p> <p>ASX will review whether it is possible to include notations in the emergency MS Word versions of the online forms informing users of any applicable word/character/data format limits in any future upgrade of the online forms.</p>
<p>One respondent commented that it had encountered some circumstances where the online forms did not work for the specifics of the transaction being contemplated and that the user had to revert to using the MS Word version of the form, adding additional time to the lodgement process. It noted that there needs to be some flexibility to recognise that not all circumstances will suit the online forms.</p>	<p>ASX would encourage any listed entity or adviser who finds that an online form does not accommodate a particular transaction to discuss that issue with ASX at an early stage to explore alternative solutions that may be available. These may include:</p> <ul style="list-style-type: none"> • using a cover announcement or supplementary announcement with the online form to provide additional information; or • using a paper-based form that has been modified to address the issue.
<p>One respondent suggested that it would be helpful if the data fields in the online forms were bigger and less restrictive.</p>	<p>ASX will review the restrictions on data fields in any future upgrade of the online forms to ensure they continue to be appropriate.</p>
<p>One respondent noted that the Appendices require listed entities to include the ASX codes for unquoted securities. It mentioned that it had found that many listed entities are not aware of what those codes are or how to access them. They suggested that it would be helpful if ASX could provide some guidance on how to find this information.</p>	<p>ASX will clarify this issue in its next update to Guidance Note 30 <i>Notifying an Issue of Securities and Applying for their Quotation</i>.</p>

Submission	ASX Response
<p>One respondent commented that many listed entities have different tranches of performance rights on issue from time to time under their employee equity schemes, with each tranche having slightly different performance conditions, performance periods etc</p> <p>It noted that, in the past, it had received confirmation from ASX that it is acceptable to treat each tranche as part of the same class of rights for the purposes of the Appendices. It suggested that it would be helpful if ASX could clarify this issue in the LR.</p>	<p>ASX will clarify this issue in its next update to Guidance Note 30 <i>Notifying an Issue of Securities and Applying for their Quotation</i>.</p>
