

## FOREIGN ENTITIES LISTING ON ASX

<p><b>The purpose of this Guidance Note</b></p>	<ul style="list-style-type: none"> <li>To assist entities established outside of Australia (foreign entities) considering a listing on ASX to understand the options available to them</li> </ul>
<p><b>The main points it covers</b></p>	<ul style="list-style-type: none"> <li>The three categories of ASX listings available to foreign entities – an ASX Foreign Exempt Listing, a standard ASX Listing and an ASX Debt Listing</li> <li>The requirements to be admitted as an ASX Foreign Exempt Listing</li> <li>Particular issues that a foreign entity applying for admission as a standard ASX Listing should consider, over and above those addressed in Guidance Note 1 <i>Applying for Admission – ASX Listings</i></li> <li>Particular issues that a foreign entity applying for admission as an ASX Debt Listing should consider, over and above those addressed in Guidance Note 29 <i>Applying for Admission – ASX Debt Listings</i></li> <li>Common issues for foreign entities that apply to all 3 categories of ASX listings</li> </ul>
<p><b>Related materials you should read</b></p>	<ul style="list-style-type: none"> <li>Guidance Note 1 <i>Applying for Admission – ASX Listings</i></li> <li>Guidance Note 5 <i>CHESS Depository Interests (CDIs)</i></li> <li>Guidance Note 7 <i>US Entities - Regulation S Offerings on ASX</i></li> <li>Guidance Note 8 <i>Continuous Disclosure: Listing Rules 3.1 – 3.1B</i></li> <li>Guidance Note 9 <i>Disclosure of Corporate Governance Practices</i></li> <li>Guidance Note 17 <i>Waivers and In-Principle Advice</i></li> <li>Guidance Note 20 <i>ASX Online</i></li> <li>Guidance Note 29 <i>Applying for Admission – ASX Debt Listings</i></li> <li>Guidance Note 30 <i>Notifying an Issue of Securities and Applying for Their Quotation</i></li> <li>Guidance Note 34 <i>Naming Conventions for Debt and Hybrid Securities</i></li> </ul>

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**Important notice:** ASX has published this Guidance Note to assist listed entities to understand and comply with their obligations under the Listing Rules. Nothing in this Guidance Note necessarily binds ASX in the application of the Listing Rules in a particular case. In issuing this Guidance Note, ASX is not providing legal advice and listed entities should obtain their own advice from a qualified professional person in respect of their obligations. ASX may withdraw or replace this Guidance Note at any time without further notice to any person.

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## 1. Introduction

This Guidance Note is published to assist entities established outside of Australia (foreign entities) considering a listing on ASX Limited ("ASX") to understand the options available to them.

### 1.1 The benefits of an ASX listing

An ASX listing brings with it significant benefits. These include access to:

- one of the world's largest investment pools underpinned by Australia's mandatory superannuation system;
- price discovery in a deep and liquid market worth in excess of \$2 trillion;

- the world class trading platform and clearing and settlement infrastructure of ASX, and the status that comes from being listed on one of the world's top 10 exchanges.

### 1.2 Listing categories

There are two ways a foreign entity may list equity securities on ASX:

- as an **ASX Foreign Exempt Listing**: this category is for entities listed on another securities exchange that wish to have a secondary listing on ASX and that meet certain eligibility criteria. Entities in this category are expected to comply primarily with the Listing Rules of their home exchange and are exempt from complying with most of ASX's Listing Rules.
- as a standard **ASX Listing**: this category is for entities that wish to have ASX as their primary listing venue or that do not meet the eligibility criteria to be admitted as an ASX Foreign Exempt Listing. Entities in this category are subject to ASX's Listing Rules, even if they are listed on another securities exchange.

A foreign entity may also list debt securities on ASX as an **ASX Debt Listing**.

This Guidance Note provides guidance in:

- section 2 to foreign entities seeking an ASX Foreign Exempt Listing on how to prepare their applications for admission;
- section 3 on issues specifically relevant to foreign entities seeking a standard ASX Listing;
- section 4 on issues specifically relevant to foreign entities seeking an ASX Debt Listing; and
- section 5 on common issues relevant to foreign entities seeking any category of ASX listing.

More general guidance on standard ASX listings can be found in Guidance Note 1 *Applying for Admission – ASX Listings*, while more general guidance on ASX Debt Listings can be found in Guidance Note 29 *Applying for Admission – ASX Debt Listings*.

Some other Guidance Notes of general application that foreign entities may find helpful are Guidance Note 5 *CHESS Depositary Interests (CDIs)*, Guidance Note 14 *ASX Market Announcements Platform* and Guidance Note 20 *ASX Online*.

Guidance for foreign entities that are already listed on ASX on how to prepare applications for quotation of additional securities can be found in Guidance Note 30 *Notifying an Issue of Securities and Applying for Their Quotation*.

Guidance for United States entities on how they can offer their securities on the ASX market under the safe harbour provisions of Regulation S of the US Securities Act 1933 can be found in Guidance Note 7 *US Entities – Regulation S Offerings on ASX*.

## 2. ASX Foreign Exempt Listings

### 2.1 Admission requirements

To be admitted as an ASX Foreign Exempt Listing, a foreign entity must meet the requirements in Listing Rule 1.11. The key requirements are:

- the entity must be a foreign entity and have as its overseas home exchange a stock exchange or market that is acceptable to ASX;<sup>1</sup>

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<sup>1</sup> Listing Rule 1.11 condition 1. Note that if an entity admitted as an ASX Foreign Exempt Listing ceases to be listed on its overseas home exchange and it wishes to maintain its listing on ASX, it will need to change its category of listing from ASX Foreign Exempt Listing to ASX Listing (see generally Guidance Note 1 *Applying for Admission – ASX Listings*).

- the entity must be subject to, and ASX must be satisfied that it complies with, the Listing Rules (or their equivalent) of its overseas home exchange;<sup>2</sup>
- the entity must inform ASX of any waiver of all or part of any listing rule (or the equivalent) of its overseas home exchange that will be in effect in respect of the entity on its admission to the official list and, if ASX requires, the entity must release details of any such waiver to the market;<sup>3</sup>
- if the entity is a foreign company,<sup>4</sup> it must be registered as a foreign company carrying on business in Australia<sup>5</sup> under the Corporations Act 2001 (Cth);<sup>6</sup>
- if the entity is a trust:
  - if the entity is not a “qualifying NZ entity”,<sup>7</sup> it must have an exemption from the Australian Securities and Investments Commission (“ASIC”) from the requirement to be a registered scheme in Australia<sup>8</sup> and its responsible entity<sup>9</sup> must be an Australian company or registered as a foreign company carrying on business in Australia under the Corporations Act;<sup>10</sup> and
  - no-one must be under an obligation to buy back units in the trust or to allow a security holder to withdraw from the trust;<sup>11</sup> and
- the entity must either:
  - be approved to act as an issuer of quoted securities under the operating rules of an approved clearing and settlement facility;<sup>12</sup> or
  - if it is established in a jurisdiction whose laws have the effect that its securities cannot be registered or transferred under the operating rules of an approved clearing and settlement facility, be approved as a foreign issuer of CDIs under the operating rules of an approved clearing and settlement facility.<sup>13</sup>

In terms of the first requirement above that an applicant have an overseas home exchange that is acceptable to ASX, the main boards of the principal exchanges in developed markets are generally acceptable to ASX for these

<sup>2</sup> Listing Rule 1.11 conditions 2 and 3.

<sup>3</sup> Listing Rule 1.11 condition 4.

<sup>4</sup> “Foreign company” means a body corporate that is not formed or established in Australia (Listing Rule 19.12).

<sup>5</sup> For further information about the process involved in registering as a foreign company, see ‘5.1 Registration as a foreign company under the Corporations Act’ on page 23.

<sup>6</sup> Listing Rule 1.11 condition 7. The Corporations Act 2001 (Cth) is the principal legislation governing companies and securities matters in Australia. It is referred to in the balance of this Guidance Note as the “Corporations Act”. Unless otherwise indicated, references in this Guidance Note to sections of an Act are to sections of the Corporations Act.

<sup>7</sup> “Qualifying NZ entity” means a foreign company or foreign trust that is formed or established in New Zealand, that has NZX as its overseas home exchange and whose securities are admitted to quotation on the main board of NZX (Listing Rule 19.12).

<sup>8</sup> “Registered scheme” means a managed investment scheme registered under Part 5C.1 of the Corporations Act. If an entity is a registered scheme in Australia, it is by definition an Australian trust and therefore not a foreign entity. Qualifying NZ entities that are trusts do not need to be a registered scheme in Australia nor have an exemption from that requirement by virtue of the trans-Tasman mutual recognition scheme embodied in Chapter 8 of the Corporations Act and related regulations. See ASIC Regulatory Guide 190 *Offering financial products in New Zealand and Australia under mutual recognition*.

<sup>9</sup> “Responsible entity” means: (a) in relation to a managed investment scheme registered under the Corporations Act, the responsible entity of that scheme under that Act; (b) in relation to a trust that is not a registered managed investment scheme, the entity that in ASX’s opinion performs a substantially equivalent role in relation to the trust as the responsible entity performs in relation to a registered managed investment scheme (Listing Rule 19.12).

<sup>10</sup> Listing Rule 1.11 condition 8(a).

<sup>11</sup> Listing Rule 1.11 condition 8(b).

<sup>12</sup> Listing Rule 1.11 condition 12(a). See also ‘5.4 Clearing and settlement’ on page 26 below.

<sup>13</sup> Listing Rule 1.11 condition 12(b). See also ‘5.4 Clearing and settlement’ on page 26 below.

purposes.<sup>14</sup> Second boards in developed markets and exchanges in emerging or developing markets<sup>15</sup> are considered more closely by ASX and will only be acceptable to ASX if they have a regulatory framework broadly equivalent to the framework applying to Australian entities with their primary listing on ASX. An applicant seeking a foreign exempt listing that has its primary listing on a second board or in an emerging or developing market may be required by ASX to make submissions on this point.

In addition to the general requirements above, if the entity is a qualifying NZ entity,<sup>16</sup> it must meet the following additional requirements to be admitted as an ASX Foreign Exempt Listing:

- it must satisfy either the profit test in Listing Rule 1.2 or the assets test in Listing Rule 1.3 (with the exceptions of Listing Rules 1.3.2 and 1.3.3(a) and (b));<sup>17</sup>
- it must apply for and be granted permission for quotation of all of the securities that are in the class for which it seeks quotation;<sup>18</sup> and
- it must satisfy ASX that each director or proposed director, the CEO or proposed CEO, and the CFO or proposed CFO, of the entity at the date of listing on ASX (together, “relevant officers”) is of good fame and character.<sup>19</sup> Further guidance on what documentation has to be produced to meet this requirement can be found in section 3.21 of Guidance Note 1 *Applying for Admission – ASX Listings*. In the case of a relevant officer who is or has in the past 10 years been a resident of New Zealand, it will include:<sup>20</sup>
  - an original or certified copy of a criminal history check from the NZ Ministry of Justice which is not more than 12 months old;
  - an original or certified copy of a bankruptcy check from the NZ Insolvency and Trustee Service or a search of its insolvency register which is not more than 12 months old; and
  - a statutory declaration<sup>21</sup> confirming that:
    - (a) the relevant officer has not been the subject of any criminal or civil penalty proceedings or other enforcement action by any government agency in which he or she was found to have engaged in behaviour involving fraud, dishonesty, misrepresentation, concealment of material facts or breach of duty;
    - (b) the relevant officer has not been refused membership of, or had their membership suspended or cancelled by, any professional body on the ground that he or she has engaged in behaviour involving fraud, dishonesty, misrepresentation, concealment of material facts or breach of duty;

<sup>14</sup> Borsa Italiana, Deutsche Börse, EuroNext (Amsterdam), EuroNext (Brussels), EuroNext (Lisbon), EuroNext (Paris), Frankfurt Stock Exchange, HKSE, LSE, SGX, SIX Swiss Exchange, TASE (Israel), TSE (Tokyo), TSX (Toronto), NASDAQ, NYSE and NZX are therefore all acceptable home exchanges for the purposes of Listing Rule 1.11 condition 1.

<sup>15</sup> For these purposes, ASX generally regards any country that is on the list of developing countries declared by the Minister for Foreign Affairs for the purposes of the Overseas Aid Gift Deduction Scheme established by the Income Tax Assessment Act 1997 (available online at <https://www.dfat.gov.au/sites/default/files/list-developing-countries.pdf>) as an emerging or developing market. However, even though South Africa and Malaysia are considered emerging or developing markets on that list, JSE and Bursa Malaysia are considered by ASX to be acceptable home exchanges for the purposes of Listing Rule 1.11 condition 1.

<sup>16</sup> See note 7 above.

<sup>17</sup> Listing Rule 1.11 condition 6(a). Further guidance on what is required to meet the profit test in Listing Rule 1.2 and the assets test in Listing Rule 1.3 can be found in sections 3.10 and 3.11 of Guidance Note 1 *Applying for Admission – ASX Listings*.

<sup>18</sup> Listing Rule 1.11 condition 5(a).

<sup>19</sup> Listing Rule 1.11 condition 11.

<sup>20</sup> Additional documentation will be required if the relevant officer has been a resident of another country at any time in the past 10 years.

<sup>21</sup> An editable version of this statutory declaration can be downloaded from [www.asx.com.au/regulation/compliance/compliance-downloads.htm](http://www.asx.com.au/regulation/compliance/compliance-downloads.htm).

- (c) the relevant officer has not been the subject of any disciplinary action (including any censure, monetary penalty or banning order) by a securities exchange or other authority responsible for regulating securities markets for failure to comply with his or her obligations as a director or officer of a listed entity;
- (d) no listed entity of which he or she was a relevant officer (or, in the case of a listed trust, in respect of which he or she was a relevant officer of the responsible entity of the trust) at the time of the relevant conduct has been the subject of any disciplinary action (including any censure, monetary penalty, suspension of trading or termination of listing) by a securities exchange or other authority responsible for regulating securities markets for failure to comply with its obligations under the listing rules applicable to that entity; and
- (e) the relevant officer is not aware of any pending or threatened investigation or enquiry by a government agency, professional body, securities exchange or other authority responsible for regulating securities markets that could lead to proceedings or action of the type described in (a), (b), (c) or (d) above,

or, if the relevant officer is not able to give such confirmation, a statement to that effect and a detailed explanation of the circumstances involved.<sup>22</sup>

If the entity is not a qualifying NZ entity,<sup>23</sup> it must meet the following additional requirements to be admitted as a Foreign Exempt Listing:

- it must have at least A\$200 million operating profit before tax for each of the last three years or, at the time of admission, have net tangible assets of at least A\$2,000 million or a market capitalisation of at least A\$2,000 million;<sup>24</sup> and
- the entity must apply for and be granted quotation of securities in a class for which it seeks quotation (it may apply for quotation of all or a subset of the securities in that class).<sup>25</sup>

## 2.2 Initial discussion in advance of application

Before submitting an application for admission as an ASX Foreign Exempt Listing, ASX strongly recommends that the applicant first have an initial discussion with the admissions team in ASX Listings Compliance. This is particularly the case if the application involves any of the following:

- the applicant has its primary listing on a second board or in an emerging or developing market;
- the applicant is proposing to request any waivers from, or rulings in respect of, the Listing Rules in conjunction with its application; or
- there are circumstances present that could lead to ASX exercising its absolute discretion not to admit the applicant to the official list.<sup>26</sup>

In addition to providing a preliminary view on any of the matters mentioned above,<sup>27</sup> ASX Listings Compliance will be able to provide general guidance on the listing process and on the expected timeframe for listing, given its

<sup>22</sup> In considering whether the applicant's relevant officers meet the "good fame and character" requirement, ASX will primarily have regard to the documents mentioned in the text above. However, ASX may also have regard to any other information it has about the relevant officers from any source and, in an appropriate case, may require an applicant for listing to provide additional information about its relevant officers.

<sup>23</sup> See note 7 above.

<sup>24</sup> Listing Rule 1.11 condition 6(b) and Listing Rules 1.12 and 1.13.

<sup>25</sup> Listing Rule 1.11 condition 5(b).

<sup>26</sup> See '2.6 The listing decision' on page 10.

<sup>27</sup> In an appropriate case, ASX Listings Compliance may suggest to the applicant that it seek in-principle advice from ASX about a matter mentioned above before it goes to the effort and expense of lodging a listing application (see Guidance Note 17 *Waivers and In-Principle Advice*).

current workloads and the nature and complexity of the application. It can also provide information about available ASX trading codes and arrange the reservation of a suitable code for the applicant.<sup>28</sup>

The initial discussion should be held at the earliest opportunity with the ASX branch office where the entity intends to lodge its application for admission. Generally, this should be the branch office where the applicant will have its home branch if its application for admission is successful.<sup>29</sup>

The applicant should provide to ASX Listings Compliance all material information in its possession relevant to the matters being discussed so that the discussions are informed and meaningful.

### 2.3 The admission application

To apply for admission to the ASX official list, an entity must complete an application in the prescribed form and give it to ASX. The prescribed form for an entity applying for admission as an ASX Foreign Exempt Listing is Appendix 1C – *Application for Admission to the ASX Official List (ASX Foreign Exempt Listing)*. An editable version of the Appendix 1C application form can be downloaded from:

<http://www.asx.com.au/regulation/compliance/compliance-downloads.htm>.

The application must be properly completed and dated. It must also be accompanied by:

- the *Information Form and Checklist (ASX Foreign Exempt Listings)* published on the ASX website;<sup>30</sup> and
- all of the information and documents referred to in that Form/Checklist.

The *Information Form and Checklist (ASX Foreign Exempt Listings)* has two annexures – annexure 1 for applicants that are not qualifying NZ entities and annexure 2 for applicants that are qualifying NZ entities. The applicable annexure must also be completed and all of the information and documents referred to in it provided to ASX.

The *Information Form and Checklist (ASX Foreign Exempt Listings)* requires the applicant to provide certain information about itself, including a copy of its constitution and 10 copies of its most recent annual report and any subsequent interim report it has issued.

In the case of an entity that is not a qualifying NZ entity, annexure I to the *Information Form and Checklist (ASX Foreign Exempt Listings)* also requires the entity to provide a concise summary<sup>31</sup> of:

- the rights and obligations of security holders under the law of its home jurisdiction and/or the rules of its home exchange covering:
  - what types of transactions require security holder approval;
  - whether security holders have a right to request or requisition a meeting of security holders;
  - whether security holders have a right to appoint proxies to attend and vote at meetings on their behalf;
  - how changes in the rights attaching to securities are regulated;
  - what rights do security holders have to seek relief for oppressive conduct;

<sup>28</sup> On the reservation of trading codes, see Guidance Note 18 *Market Codes*.

<sup>29</sup> The ASX home branch for an entity looks after day-to-day matters relating to the entity's listing and makes decisions about the Listing Rules that affect it. ASX has home branches in Perth (servicing entities based in WA), Melbourne (servicing entities based in Victoria and Tasmania) and Sydney (servicing all other entities).

<sup>30</sup> An editable version of the *Information Form and Checklist (ASX Foreign Exempt Listings)* can also be downloaded from <http://www.asx.com.au/regulation/compliance/compliance-downloads.htm>.

<sup>31</sup> The concise summary is not intended to be a legal treatise on the laws of the entity's home jurisdiction or a detailed comparative analysis of those laws with the laws of Australia. For those matters where the entity's home jurisdiction has broadly comparable laws to Australia, a statement to that effect will generally suffice.

- what rights do security holders have to bring or intervene in legal proceedings on behalf of the entity; and
- whether there is any equivalent to the “two strikes” rule in relation to remuneration reports in Part 2G.2 Division 9 of the Corporations Act;
- the obligations of the entity under the law of its home jurisdiction and/or the rules of its home exchange regarding:
  - the disclosure of material information;
  - the disclosure of periodic financial information and the accounting and auditing standards that apply;
  - requirements for information to be sent to security holders; and
  - regulation of dealings with directors and controlling holders of equity securities;
- how the disclosure of substantial holdings and takeovers are regulated under the law of its home jurisdiction; and
- a summary of any taxes or duties payable under the law of its home jurisdiction by an investor in relation to the acquisition, holding or disposal of securities in the entity or, if there are no such taxes or duties, a statement to that effect.

Where the entity has CDIs issued over its securities, the information provided by the entity should be supplemented to explain the specific rights and obligations of CDI holders under the law of its home jurisdiction.

ASX may reject or defer consideration of an application for listing that is not properly completed or that is not accompanied by all of the required information and documents.

Given the limited number of ASX Listing Rules that apply to an ASX Foreign Exempt listing,<sup>32</sup> it would be unusual for an applicant seeking to list in that category to ask ASX for a waiver of, or in-principle advice about, a Listing Rule in connection with its listing. If it wishes to do so, its application for listing should be accompanied by a letter from the entity or its advisers detailing the waiver or advice sought and providing the information set out in Guidance Note 17 *Waivers and In-Principle Advice*.

## 2.4 Processing time

ASX Listings Compliance aims to process applications for listing as quickly as it reasonably can, given its workload at the time. Typically, an application for an ASX Foreign Exempt Listing will take ASX around four to six weeks to process, from the time a completed application for listing and all other required documents are lodged with ASX until a decision is made on whether or not to admit the applicant to the official list and quote its securities. It may take longer, however, if:

- the application raises any issues that might cause ASX to exercise its absolute discretion under Listing Rule 1.19 to refuse the application;<sup>33</sup>
- the applicant is seeking an atypical number or type of waivers from the Listing Rules;
- the application is incomplete or of a poor standard; or
- the applicant is tardy in responding to any requests by ASX for further information or documents required to process its listing application.

<sup>32</sup> See ‘2.10 Continuing requirements’ on page 11.

<sup>33</sup> See ‘2.6 The listing decision’ on page 10.



In each case above, ASX Listings Compliance will liaise with the applicant and keep it apprised of the impact this may have on its timetable for listing.

Where an applicant is making a non-underwritten offer of securities in conjunction with its application to list on ASX which is subject to a minimum subscription condition, ASX may defer finalising its review of the application until it is advised by the applicant that the minimum subscription condition has been, or is close to being, satisfied. If it does delay finalising its review of the application, ASX will advise the applicant of that fact. Whether or not ASX does this, the applicant should keep ASX apprised of its progress in satisfying any minimum subscription condition for a non-underwritten offer of securities.

The time it takes ASX to process an application for listing is very much a function of the quality and completeness of the application. The better the quality of the application, the more quickly and efficiently ASX is likely to be able to process it. ASX would therefore strongly encourage an applicant for listing to engage professional advisers who are experienced in ASX listings and to seek their advice and assistance in preparing its listing application.

Subject to the comments above, ASX Listings Compliance will generally try to process an application for listing within a timeframe that is consistent with the timetable outlined in any prospectus, PDS or information memorandum the applicant may be issuing in connection with its listing. That said, if an applicant intends to specify in its prospectus, PDS or information memorandum a timetable that is shorter than six weeks from the date of lodgement of the application with ASX, it should discuss the matter with ASX Listings Compliance at the earliest opportunity to determine whether the proposed timetable can be accommodated.

## 2.5 Payment of initial listing fee

An entity applying for admission as an ASX Foreign Exempt Listing must pay an initial listing fee in accordance with Chapter 16 of the Listing Rules and the schedule of fees set out in Guidance Note 15A *Schedule of ASX Listing Fees*. This payment must be made at the time it lodges its application for listing. ASX will not begin processing an application for listing until it has received the initial listing fee.

In the case of a qualifying NZ entity, the initial listing fee is calculated by reference to the value of all of the securities in the relevant class the entity is seeking to have quoted on ASX.<sup>34</sup> In any other case, the initial listing fee is calculated by reference to the value of the specific securities or CHESS Depository Interests (“CDIs”)<sup>35</sup> to be included on the entity’s Australian register<sup>36</sup> which it is seeking to have quoted on ASX.<sup>37</sup> If an entity is unsure about the number of its securities or CDIs that will or should be included on its Australian register, it should discuss that issue with the ASX Listings Adviser handling its listing application.

Payment of the initial listing fee can be made either by cheque made payable to ASX Operations Pty Ltd or by electronic funds transfer to the following account:

Bank: National Australia Bank  
Account Name: ASX Operations Pty Ltd  
BSB: 082 057  
A/C: 494728375  
Swift Code (Overseas Customers): NATAAU3302S

If payment is made by electronic funds transfer, the applicant should email its remittance advice to [ar@asx.com.au](mailto:ar@asx.com.au) or fax it to (612) 9227-0553, describing the payment as “initial listing fee” and including the name of the entity applying for admission, the ASX home branch where the entity has lodged its application (ie Sydney, Melbourne or Perth) and the amount paid.

<sup>34</sup> Listing Rules 1.11 condition 5(a) and 2.4.

<sup>35</sup> See Guidance Note 5 *CHESS Depository Interests (CDIs)*.

<sup>36</sup> The reference here to an entity’s Australian register includes its CHESS sub-register and its issuer sponsored sub-register. See ‘5.4 Clearing and settlement’ on page 26 below for an explanation of CHESS and issuer sponsored sub-registers.

<sup>37</sup> Listing Rule 1.11 condition 5(b).

Further guidance about the calculation and payment of listing fees is set out in Guidance Note 15 *ASX Listing Fees*.

### 2.6 The listing decision

Decisions on whether or not an entity meets the conditions for admission as an ASX Foreign Exempt Listing and the quotation of its securities, and whether or not to grant any waiver requested or required in connection with its admission or the quotation of its securities, are generally made on behalf of ASX by senior management within the ASX Listings Compliance function. ASX's decision on these matters will be reduced to writing and communicated to the applicant by ASX Listings Compliance, usually via an emailed letter.

ASX has an absolute discretion in deciding whether or not to admit an entity to the official list and to quote its securities, and is not required to give any reasons for its decision in that regard.<sup>38</sup> Given the specific admission conditions an ASX Foreign Exempt Listing must meet, it would be rare for ASX to exercise this discretion for an ASX Foreign Exempt Listing. However, ASX does retain the discretion not to admit an entity to the official list even where the entity meets, or is expected to meet, the specific conditions set out in the Listing Rules for listing and quotation. Examples where ASX may do so include where:

- ASIC or another corporate regulator has expressed concerns to ASX about the admission of the applicant to the official list;
- the applicant has been denied admission to the official list of another exchange; or
- ASX otherwise has concerns that admitting the applicant to the official list may put at risk the reputation of the ASX market as one of quality and integrity.<sup>39</sup>

### 2.7 Admission/quotation conditions

ASX may impose such conditions on admission and/or quotation as it considers appropriate.<sup>40</sup>

In practice, ASX's decision to admit an entity as an ASX Foreign Exempt Listing and to quote its securities is usually expressed to be subject to conditions that must be satisfied before the decision becomes effective. For example, if the entity is proposing to raise funds domestically by offering securities under a prospectus or product disclosure statement (PDS) in conjunction with its application for admission, these conditions will typically include:

- the close of the offer under the applicant's prospectus or PDS and the completion of the allotment and issue of any required minimum subscription;
- ASX receiving written<sup>41</sup> confirmation from the applicant of the final number of securities issued under the applicant's prospectus or PDS and of the number of securities to be quoted on ASX no later than midday at least one business day prior to the intended date for initial quotation of the securities;
- confirmation in a form acceptable to ASX (usually a bank statement) that the applicant has received cleared funds for the full amount of the issue price for the securities issued under the applicant's prospectus or PDS;
- the mailing of CHES or issuer sponsored holding statements to the successful applicants;<sup>42</sup> and
- provision to ASX of any remaining documents referred to in the *Information Form and Checklist (ASX Foreign Exempt Listings)* that have not yet been lodged with ASX.

<sup>38</sup> Listing Rules 1.19 and 2.9.

<sup>39</sup> The list of examples in the text where this discretion may be exercised is not intended to be exhaustive.

<sup>40</sup> Listing Rules 1.19 and 2.9.

<sup>41</sup> This may be in the form of an email (Listing Rule 19.3(l)).

<sup>42</sup> CHES stands for 'Clearing House Electronic Subregister System'. CHES is a proprietary system operated by ASX Settlement that facilitates the clearing and settlement of trades in securities quoted on ASX and includes an electronic sub-register for the registration of title to securities issued by ASX-listed companies. See also '5.4 Clearing and settlement' on page 26.

If the entity is not raising any funds domestically but it has existing Australian shareholders, ASX may require that these holders are given the opportunity to convert their shares into CHESS Depository Interests as a condition of admission. Further guidance on this topic can be found in Guidance Note 5 *CHESS Depository Interests (CDIs)*.

Once ASX is satisfied that the entity has met all applicable admission and quotation conditions, ASX will notify the entity of the date on which trading in its securities will commence.

### 2.8 Documents released to the market

After ASX has admitted an entity to the official list, and prior to the commencement of quotation, a number of documents will be released to the market through the ASX Market Announcements Platform as pre-quotation disclosure. This is to help ensure that there is an informed secondary market in the entity's securities when they start trading on ASX. These documents will typically include:

- the entity's Appendix 1C application form and the accompanying *Information Form and Checklist (ASX Foreign Exempt Listings)*;
- the entity's constitution; and
- any annual report or other financial statements given to ASX with the application.

The documents released to the ASX Market Announcements Platform will not include any letter applying for a waiver or in-principle advice.

If the applicant has received a waiver of any Listing Rule in connection with its admission, ASX may require the entity to disclose on the ASX Market Announcements Platform the fact that it has received a waiver of a Listing Rule and the terms of that waiver.

### 2.9 Requirements for additional information

ASX has the power to require an applicant for listing to disclose additional information over and above that required in its Appendix 1C application form and the accompanying *Information Form and Checklist (ASX Foreign Exempt Listings)*.<sup>43</sup> ASX also has the power to impose a condition on admission or quotation that the applicant disclose certain information to the market before quotation commences.<sup>44</sup>

It would be uncommon for ASX to exercise either of these powers in relation to an ASX Foreign Exempt Listing. ASX would generally only do so if it formed the view that investors in Australia required additional information, over and above that which had been disclosed under the listing rules of the entity's overseas home exchange, in order for trading in the entity's securities on the Australian market to take place on a reasonably informed basis.

### 2.10 Continuing requirements

Once listed on ASX, an ASX Foreign Exempt Listing is exempt from complying with most of ASX's Listing Rules. However, it must comply with the following requirements:

- it must immediately provide to ASX all information it provides to its overseas home exchange that is, or is to be, made public<sup>45</sup> – the information must be in English or accompanied by an English translation;<sup>46</sup>

<sup>43</sup> Listing Rule 1.17. ASX may require this information to be submitted to the scrutiny of an expert selected by ASX. The applicant must pay for the expert.

<sup>44</sup> Listing Rules 1.19 and 2.9.

<sup>45</sup> Listing Rule 1.15.2.

<sup>46</sup> Listing Rule 15.2A.

- it must continue to comply with the listing rules of its overseas home exchange and, by no later than the lodgement of its full year accounts with ASX in each year, give ASX a statement that it continues to comply with those rules for release to the market;<sup>47</sup>
- it must promptly inform ASX if it is granted a waiver of all or part of any listing rule of its overseas home exchange and, if ASX requires, the entity must release details of any such waiver to the market;<sup>48</sup>
- it must immediately request a trading halt in respect of its securities or a class of them if trading in those securities or that class is halted on its overseas home exchange;<sup>49</sup>
- it must immediately request a suspension in respect of its securities or a class of them if those securities or that class have been suspended from quotation on its overseas home exchange;<sup>50</sup>
- if it has a dual listing on ASX and an overseas exchange and has CDIs issued over its quoted securities, it must lodge with ASX on a monthly basis an Appendix 4A *Statement of CDIs on Issue*;<sup>51</sup>
- it must comply with various ASX Listing Rules relating to transfers and registers of securities;<sup>52</sup>
- if it is a qualifying NZ entity, it must apply for quotation of all additional securities in a class of securities that is to be quoted or is already quoted on ASX;<sup>53</sup>
- it must comply with the requirement to lodge with ASX copies of notices it receives from substantial holders;<sup>54</sup>
- it must comply with some ASX Listing Rules relating to certain procedural and administrative matters:
  - the requirement to appoint a person responsible for communications with ASX;<sup>55</sup>
  - if it is a foreign company, the requirement to remain registered as a foreign company carrying on business in Australia under the Corporations Act;<sup>56</sup>
  - if it is a foreign trust which has as its responsible entity an entity which is not an Australian company, the requirement for its responsible entity to remain registered as a foreign company carrying on business in Australia under the Corporations Act;<sup>57</sup>
  - the way announcements are lodged with ASX, including those announcements that have to be made using an online form provided by ASX;<sup>58</sup>
  - trading halts, suspension and removal;<sup>59</sup>

<sup>47</sup> Listing Rule 1.15.3.

<sup>48</sup> Listing Rule 1.15.4.

<sup>49</sup> Listing Rule 1.15.5. Listing Rule 17.1 applies to any such request. This requirement does not limit the application of Chapter 17 to an entity.

<sup>50</sup> Listing Rule 1.15.6. Listing Rule 17.2 applies to any such request. This requirement does not limit the application of Chapter 17 to an entity.

<sup>51</sup> Listing Rules 1.15.1 and 4.11.

<sup>52</sup> Being Listing Rules 2.2, 2.7, 8.1, 8.2, 8.3, 8.5, 8.6, 8.7, 8.10, 8.11, 8.17 and 8.21 (Listing Rule 1.15.1). See also '5.4 Clearing and settlement' on page 26.

<sup>53</sup> Listing Rules 1.15.1A and 2.4.

<sup>54</sup> Listing Rules 1.15.1, 3.17.3 and 3.17.4. See also '3.8 Information about substantial holdings' on page 21.

<sup>55</sup> Listing Rules 1.15.1 and 12.6. See also '5.2 Appointment of person responsible for communications with ASX' on page 25.

<sup>56</sup> Listing Rules 1.15.1B and 12.6A. See also 'see '5.1 Registration as a foreign company under the Corporations Act' on page 23.

<sup>57</sup> Listing Rules 1.15.1C and 12.6B. See also '5.1 Registration as a foreign company under the Corporations Act' on page 23.

<sup>58</sup> Listing Rules 1.15.1, 15.2 to 15.6, 15.8 and 15.9.

<sup>59</sup> Listing Rule 1.15.1 and Chapter 17.

- the application of the Listing Rules;<sup>60</sup> and
- interpretation and definitions;<sup>61</sup> and
- it must pay ASX's prescribed fees under Chapter 16 of the Listing Rules.<sup>62</sup>

### 2.11 ASX's discretion to apply other rules

ASX has the power to prescribe additional Listing Rules with which an ASX Foreign Exempt Listing must comply.<sup>63</sup>

It would be uncommon for ASX to exercise this power in relation to an ASX Foreign Exempt Listing. ASX would generally only do so if it formed the view that there are significant gaps in the listing rules of the entity's overseas home exchange compared to the ASX Listing Rules, or if those listing rules are not being enforced in a way that is consistent with the legitimate expectations of investors trading on ASX.

One such example is where ASX becomes concerned that insufficient information has been disclosed by the entity under the Listing Rules of its overseas home exchange for trading in its securities to take place on a reasonably informed basis. In those circumstances, ASX may consider imposing a requirement that the entity comply with ASX's continuous disclosure requirements in Listing Rules 3.1 - 3.1B.

Another example is where ASX becomes concerned about the quality of information contained in the entity's financial statements. In those circumstances, ASX may consider imposing a requirement that the entity comply with some or all of ASX's accounting requirements in Listing Rule 19.11A.

### 2.12 Timetables for corporate actions

ASX Foreign Exempt Listings are not subject to ASX's Listing Rules relating to timetables for corporate actions (dividend payments, rights issues, reconstructions, etc.). However ASX encourages ASX Foreign Exempt Listings to consult with ASX about the timing of their corporate actions to ensure that the needs of the ASX market are taken into consideration and, to the extent possible, that the ASX market and the entity's home exchange trade on the same basis when it comes to entitlement to participate in corporate actions.

## 3. Standard ASX Listings

### 3.1 Admission requirements

A foreign entity seeking a standard ASX Listing is subject to the same admission requirements as an Australian entity, irrespective of whether it is listed on another stock exchange. Detailed information about those requirements can be found in Guidance Note 1 *Applying for Admission – ASX Listings*.

Additionally, a foreign company that wishes to list on ASX as a standard ASX Listing must be registered as a foreign company carrying on business in Australia under the Corporations Act.<sup>64</sup>

A foreign trust that wishes to list on ASX as a standard ASX Listing must be registered as a managed investment scheme under the Corporations Act or have an exemption from ASIC from that requirement.<sup>65</sup> If it registers as a managed investment scheme, this effectively converts it into an Australian trust for the purposes of the Listing Rules.<sup>66</sup>

<sup>60</sup> Listing Rule 1.15.1 and Chapter 18.

<sup>61</sup> Listing Rule 1.15.1 and Chapter 19.

<sup>62</sup> Listing Rule 1.15.1.

<sup>63</sup> Listing Rule 1.15.1. This power may be exercised before or after the entity is listed.

<sup>64</sup> Listing Rule 1.1 condition 4. See also '5.1 Registration as a foreign company under the Corporations Act' on page 23.

<sup>65</sup> Listing Rule 1.1 condition 5(a).

<sup>66</sup> See the definition of "Australian trust" in Listing Rule 19.12.

A foreign trust that is exempted from the requirement to be a registered managed investment scheme must have as its responsible entity either an Australian company or an entity that is registered as a foreign company carrying on business in Australia under the Corporations Act.<sup>67</sup>

The discussion below highlights some additional considerations that are relevant to foreign entities applying for an ASX Listing.

### 3.2 Prospectus/product disclosure statement

Unless ASX agrees to accept an information memorandum in lieu of a prospectus or PDS (which it will only do in very limited circumstances),<sup>68</sup> an entity seeking admission in the ASX Listing category must issue a prospectus or PDS, lodge it with ASIC and give it to ASX.<sup>69</sup>

Guidance Note 1 *Applying for Admission – ASX Listings* has further information about ASX's requirements for prospectuses, PDSs and information memoranda. As noted in that Guidance Note, ASX expects the prospectus, PDS or information memorandum of a foreign entity to include:

- a statement of its place of incorporation, registration or establishment;
- a statement to the effect that:

*“As [name of entity] is not established in Australia, its general corporate activities (apart from any offering of securities in Australia) are not regulated by the Corporations Act 2001 of the Commonwealth of Australia or by the Australian Securities and Investments Commission but instead are regulated by [insert name of governing legislation] and [insert name of corporate regulator administering that legislation].”*
- a concise summary<sup>70</sup> of the rights and obligations of security holders under the law of its home jurisdiction<sup>71</sup> covering:
  - what types of transactions require security holder approval;
  - whether security holders have a right to request or requisition a meeting of security holders;
  - whether security holders have a right to appoint proxies to attend and vote at meetings on their behalf;
  - how changes in the rights attaching to securities are regulated;
  - what rights do security holders have to seek relief for oppressive conduct;
  - what rights do security holders have to bring or intervene in legal proceedings on behalf of the entity; and
  - whether there is any equivalent to the “two strikes” rule in relation to remuneration reports in Part 2G.2 Division 9 of the Corporations Act;

<sup>67</sup> Listing Rule 1.1 condition 5(b).

<sup>68</sup> See ‘3.5 When ASX will accept an information memorandum in lieu of a prospectus or PDS’ in Guidance Note 1.

<sup>69</sup> Listing Rule 1.1 condition 3.

<sup>70</sup> The concise summary is not intended to be a legal treatise on the laws of the entity's home jurisdiction or a detailed comparative analysis of those laws with the laws of Australia. For those matters where the entity's home jurisdiction has broadly comparable laws to Australia, a statement to that effect will generally suffice.

<sup>71</sup> A foreign listed entity should also note its continuing obligation under Listing Rule 3.17C, if it becomes aware of a change to the law of its home jurisdiction that materially affects the rights or obligations of security holders, to give ASX details of that change immediately: see ‘3.10 Information about material changes in the rights and obligations of security holders’ on page 22.

- a concise summary<sup>72</sup> of how the disclosure of substantial holdings and takeovers are regulated under the law of its home jurisdiction; and
- a summary of any taxes or duties payable in its place of incorporation, registration or establishment by an investor in relation to the acquisition, holding or disposal of securities in the entity or, if there are no such taxes or duties, a statement to that effect.

If this information is not included in the entity's prospectus, PDS or information memorandum, ASX will require the information to be given to ASX under Listing Rule 1.17 as supplemental pre-quotation disclosure for release to the market.

### 3.3 Minimum free float, minimum spread and connection with Australia

It is not considered an obstacle to an ASX Listing that an entity does not conduct any major business activities or have management or staff based in Australia.<sup>73</sup> Accessing the substantial pool of capital in Australia in and of itself is a sufficient business reason for an entity to want to list in Australia.

An entity applying for a standard ASX Listing must satisfy ASX's minimum free float<sup>74</sup> and minimum spread requirements.<sup>75</sup> This is to ensure that there is sufficient investor interest in the entity to justify its listing and to aid liquidity.

To meet the minimum float requirement, an entity seeking admission in the ASX Listing category must have a free float at the time of its admission to the official list of not less than 20%.

"Free float"<sup>76</sup> means the percentage of the entity's main class of securities that:

- are not "restricted securities"<sup>77</sup> or subject to voluntary escrow;<sup>78</sup> and
- are held by non-affiliated security holders.

"Non-affiliated security holders" means security holders who are not:

- (a) a related party<sup>79</sup> of the entity;
- (b) an associate<sup>80</sup> of a related party of the entity; or

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<sup>72</sup> See note 70 above.

<sup>73</sup> Provided the entity has someone who can communicate with ASX on Listing Rule matters during the Sydney time zone: see '5.2 Appointment of person responsible for communications with ASX on page 25.

<sup>74</sup> Listing Rule 1.1 condition 7.

<sup>75</sup> Listing Rule 1.1 condition 8.

<sup>76</sup> See the definition of "free float" in Listing Rule 19.12.

<sup>77</sup> The concept of "restricted securities" is explained in greater detail in Guidance Note 11 *Restricted Securities and Voluntary Escrow*.

<sup>78</sup> As defined in Listing Rule 19.12.

<sup>79</sup> As defined in Listing Rule 19.12.

<sup>80</sup> "Associate" is defined in Listing Rule 19.12. The 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 paragraph has been added specifying that if the primary person is natural person, their associates include any entity they control.

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 provision exists as an evidentiary aid and 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. It is based on the premise that because of the close connection between an individual and their related parties, it should be presumed that the individual is able to control a related party, or that a related party is acting in concert with the individual, unless the contrary is proven. Otherwise it is too easy for the individual and the related party simply to deny any association and to put others to the task of proving that they are associates.

The definition of "associate" in Listing Rule 19.12 has an equivalent carve-out to that provided in section 16 of the Corporations Act, which states that a person is not an associate of another person merely because of one or more of the following: (a) one gives advice to the other, or acts on the other's behalf, in the proper performance of the functions attaching to a professional capacity or a business relationship;

- (c) a person whose relationship to the entity or to a person referred to in (a) or (b) is such that, in ASX's opinion, they should be treated as affiliated with the entity.<sup>81</sup>

To meet the minimum spread requirement, the entity must have at least 300 non-affiliated security holders, each of whom holds a parcel of the entity's main class of securities that are not restricted securities or subject to voluntary escrow with a value of at least \$2,000.<sup>82</sup>

There is no specific requirement in the Listing Rules for a minimum number of Australian-resident security holders. However, ASX does encourage entities in the ASX Listing category to have at the time of their admission to the official list a reasonable number of security holders resident in Australia with a reasonable level of security holdings, to promote local interest and liquidity in its securities. ASX also has a residual discretion under Listing Rule 1.19, which it may exercise in an appropriate case, to require as a condition of admission that the applicant has a minimum number of Australian resident security holders with a minimum size or value of security holding.

ASX will generally exercise this discretion where an applicant is established in, has its main business operations in, or has a majority of its board or a controlling shareholder resident in, an emerging or developing market. In ASX's experience, these types of entities tend to target or attract investors from the emerging or developing market, making it less likely that they will trade on ASX and more difficult for ASX to conduct its usual checks to verify that minimum spread has been obtained without using artificial means. Typically, in such a case, ASX will require at least 75% of the minimum spread to come from investors resident in Australia.

Further guidance on ASX's minimum spread requirements can be found in section 3.9 of Guidance Note 1 *Applying for Admission – ASX Listings*.

### 3.4 Continuing compliance with Listing Rules and ASX's waiver power

A foreign entity which is granted an ASX Listing must comply with all applicable ASX Listing Rule requirements, in the same way as any Australian entity, unless it is granted a specific waiver by ASX. This applies even where the entity is listed on another exchange.

ASX may, in very limited situations, recognise compliance by a foreign entity which has its primary listing on an overseas exchange with a particular obligation imposed by its home exchange as constituting, in principle, sufficient reason to justify the granting of a waiver from a comparable, but inconsistent, obligation under the ASX Listing Rules. Such waivers have historically been granted sparingly and the onus is on the applicant to show good cause why it should be granted such a waiver. ASX has no obligation to recognise the regulation of an ASX Listing by any other exchange and will only do so where it is satisfied that the exchange in question imposes comparable standards to ASX that meet the general principles on which the ASX Listing Rules are based, as outlined in the introduction to the Listing Rules.

All applications for such waivers are considered on their merits on a case-by-case basis. In considering such an application, ASX will be guided by considerations such as:

- the stature and reputation of the home exchange on which the foreign entity is listed;

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(b) one, a client, gives specific instructions to the other, whose ordinary business includes dealing in financial products, to acquire financial products on the client's behalf in the ordinary course of that business; (c) one had sent, or proposes to send, to the other an offer under a takeover bid for securities held by the other; or (d) one has appointed the other, otherwise than for valuable consideration given by the other or by an associate of the other, to vote as a proxy or representative at a meeting of members, or of a class of members, of the listed entity.

<sup>81</sup> Listing Rule 19.12. Securities held by or for an employee incentive plan are not regarded by ASX as forming a part of an entity's free float. If they do not fall within paragraph (a) or (b) of the definition of non-affiliated security holder in Listing Rule 19.12, ASX will regard them as falling within paragraph (c) of that definition.

<sup>82</sup> Where an entity is undertaking a material capital raising in conjunction with its listing, ASX will normally use the offer price under the prospectus, PDS or information memorandum for that capital raising to calculate the value of a parcel of securities for the purposes of spread. ASX may, however, use a different price to determine value if the entity is not undertaking a material capital raising in conjunction with its listing or if ASX is concerned that the offer price under the prospectus, PDS or information memorandum does not fairly reflect the value of its main class of securities (see the note to Listing Rule 1.1 condition 8). In an appropriate case, ASX may require these values to be verified by an independent expert (Listing Rule 1.17).



- the period of time the entity has been listed on that exchange;
- the entity's track record in complying with the listing rules of that exchange;
- the proportion of trading in the entity's securities that occurs, or is likely to occur, on that exchange compared to ASX;
- the proportion of the entity's business that is conducted in Australia;<sup>83</sup>
- whether the corresponding requirement of the overseas exchange is consistent with the underlying policy of the ASX Listing Rule from which a waiver is sought and with the principles that underpin ASX's Listing Rules (as set out in the introduction to the Listing Rules); and
- whether the inconvenience to the listed company in satisfying two sets of comparable, but inconsistent, requirements outweighs any detriment to users of ASX markets from the non-application of ASX's requirements.

A foreign entity applying for an ASX Listing that wishes to receive such a waiver must apply in writing for the waiver, identifying the particular ASX Listing Rule or Rules from which a waiver is sought. In its application for the waiver, the foreign entity should:

- describe in detail the corresponding rules of its home exchange with which it must comply;
- confirm that it is in full compliance with those rules;
- explain why it is considered burdensome that it should have to comply with the relevant ASX Listing Rules in addition to the rules of its home exchange; and
- justify why compliance with the rules of its home exchange in lieu of the relevant ASX Listing Rules will meet the general principles on which the ASX Listing Rules are based, as outlined in the introduction to the Listing Rules.

Further guidance on how to apply for waivers and the principles that ASX applies in deciding whether or not to grant them can be found in Guidance Note 17 *Waivers and In-Principle Advice*.

If ASX is minded to grant such a waiver, it will be subject to a condition that the listed entity continues to comply with the comparable rules of its home exchange. The waiver will also usually be granted for a nominated period only (typically one year) so that there is an opportunity to review the need for the waiver on a regular basis. ASX may withdraw the waiver at any time<sup>84</sup> and, among other circumstances, will consider doing so if there is a change in the regulatory regime that applies to the foreign entity.

If ASX grants such a waiver, the applicant will be required to make an announcement on the ASX Market Announcements Platform that the waiver has been granted.

A foreign entity applying for admission as an ASX Listing that has a primary listing on an overseas exchange other than the NZX main board and that intends to use CHESS Depository Interests (CDIs) to facilitate the holding and transfer of its ASX-quoted securities<sup>85</sup> should note one waiver, in particular, that it can seek from ASX. ASX will usually, on request, grant a waiver to such an entity from Listing Rules 1.1 condition 6 and 2.4 to relieve the entity from the obligation to apply for quotation of all the securities in its main class and instead allow it to apply for quotation of the portion of its securities that will be represented by CDIs. This will have the result that the entity will

<sup>83</sup> An entity which has its central management and control or a significant proportion of its business operations in Australia is unlikely to be granted a waiver from any ASX Listing Rules, other than standard waivers granted to Australian entities generally. This is intended to prevent essentially Australian businesses incorporating or registering themselves offshore to circumvent ASX's listing requirements and also to maintain a level playing field between entities that are listed on ASX and carrying on essentially Australian businesses, regardless of their place of incorporation or registration.

<sup>84</sup> Listing Rule 18.3.

<sup>85</sup> See '5.4 Clearing and settlement' on page 26 below and Guidance Note 5 *CHESS Depository Interests (CDIs)*.

pay ASX listing fees only on the portion of its securities represented by CDIs (ie on the Australian component of its register rather than on its full register).<sup>86</sup> This puts such entities in the same position as ASX Foreign Exempt Listings when it comes to the amount of ASX listing fees they pay.

### 3.5 Continuous disclosure requirements

Listing Rule 3.1 requires an entity admitted as an ASX Listing to tell ASX of any information that a reasonable person would expect to have a material effect on the price or value of the entity's securities, immediately upon becoming aware of such information.

Compliance with Listing Rule 3.1 is critical to the integrity and efficiency of the ASX market and other markets that trade in ASX quoted securities or derivatives of those securities. Reflecting this, Parliament has given the rule statutory force in section 674 of the Corporations Act. A listed entity which breaches Listing Rule 3.1 may also breach that section and this can attract serious legal consequences for the entity and its officers.

Further guidance about an entity's continuous disclosure obligations can be found in Guidance Note 8 *Continuous Disclosure: Listing Rules 3.1 – 3.1B*. Foreign entities admitted to the official list as an ASX Listing must ensure that they are thoroughly familiar with Guidance Note 8 and their continuous disclosure obligations under the ASX Listing Rules.

### 3.6 Financial reporting requirements

Foreign entities admitted as an ASX Listing must give periodic financial reports to ASX. These requirements are set out in Chapters 4 and 5 of the Listing Rules and are essentially the same for Australian and foreign entities.

It is important that a foreign entity admitted as an ASX Listing has internal accounting staff and external auditors with a knowledge of, and the appropriate skills and expertise in the applicable accounting and auditing standards needed to comply with, ASX's periodic financial reporting requirements.<sup>87</sup>

In brief, a foreign entity admitted as an ASX Listing must provide the following:

- in the case of an entity that is not a mining exploration entity<sup>88</sup> or oil and gas exploration entity,<sup>89</sup> a half year report containing the information in Appendix 4D;<sup>90</sup>
- the following half yearly accounts and documents:
  - if the entity is subject in its home jurisdiction to an equivalent law to section 320 of the Corporations Act requiring it to prepare half yearly accounts, the accounts and other documents prepared under that law;<sup>91</sup> or
  - if the entity is not subject in its home jurisdiction to an equivalent law to section 320 of the Corporations Act requiring it to prepare half yearly accounts, accounts for the half year equivalent to

<sup>86</sup> Where the entity has CDIs issued over its quoted securities, it will be required to lodge with ASX on a monthly basis an Appendix 4A *Statement of CDIs on Issue* showing the net movement in CDIs (Listing Rule 4.11). If new securities are issued and will be held in the form of CDIs, a separate Appendix 2A will also need to be lodged seeking quotation of those CDIs (Listing Rule 2.7).

<sup>87</sup> The *Information Form and Checklist (ASX Listing)* that must accompany its application for listing requires an applicant applying for admission to the official list as an ASX Listing to disclose the name of its auditor. In certain cases, ASX may also require the applicant to provide information about the qualifications and experience of the auditor for release to the market before quotation commences.

<sup>88</sup> A mining exploration entity means an entity whose main undertaking consists of exploration for minerals or which has been advised by ASX that it is a mining exploration entity for the purposes of the Listing Rules (Listing Rule 19.12).

<sup>89</sup> An oil and gas exploration entity means an entity whose main undertaking consists of exploration for petroleum or which has been advised by ASX that it is an oil and gas exploration entity for the purposes of the Listing Rules (Listing Rule 19.12).

<sup>90</sup> Listing Rule 4.2A.3. Mining exploration entities and oil and gas exploration entities are exempt from the requirement to provide an Appendix 4D half year report on the basis that they are required to provide quarterly activity reports under Listing Rules 5.3 and 5.4 and quarterly Appendix 5B cash flow reports under Listing Rule 5.5.

<sup>91</sup> Listing Rule 4.2A.2. The accounts must be audited or subject to review and the audit or review report must be given to ASX with the accounts.

those it would be required to prepare in its home jurisdiction if its governing legislation included a provision equivalent to section 320 of the Corporations Act;<sup>92</sup>

- in the case of an entity that is not a mining exploration entity or oil and gas exploration entity, a preliminary final (full year) report containing the information set out in Appendix 4E;<sup>93</sup>
- the following full year accounts and documents:<sup>94</sup>
  - if the entity is a registered foreign company that is required to comply with section 601CK of the Corporations Act,<sup>95</sup> a copy of the accounts and other documents it must lodge with ASIC under that section;<sup>96</sup> or
  - if the entity is not a registered foreign company that is required to comply with section 601CK of the Corporations Act, a copy of the accounts and other documents that it would be required to give ASX under the paragraph immediately above if it had to comply with the requirements of that section;<sup>97</sup> and
- the annual report it sends to security holders.<sup>98</sup>

The Appendix 4D half year report and the Appendix 4E preliminary final report must be provided as soon as they are ready to be given to ASX and no later than two months from the end of the relevant accounting period.<sup>99</sup>

Half yearly accounts must be lodged with ASX at the same time as they are lodged with the relevant overseas regulator and in any event:

- in the case of an entity that is not a mining exploration entity or oil and gas exploration entity, no later than two months after half year end; or
- in the case of a mining exploration entity or oil and gas exploration entity, no later than 75 days after half year end.<sup>100</sup>

Full year accounts lodged with ASIC under section 601CK of the Corporations Act must be given to ASX at the same time as they are lodged with ASIC and no later than three months after year end.<sup>101</sup> If an entity does not have to file full year accounts with ASIC under section 601CK of the Corporations Act, then it must give the equivalent documents to ASX no later than three months after year end.<sup>102</sup>

There are additional quarterly reporting requirements in Chapter 5 for mining and oil and gas entities. A mining producing entity or an oil and gas producing entity must provide a detailed report of its production and development activities and a summary of its exploration activities within one month after quarter end.<sup>103</sup> A mining exploration

<sup>92</sup> Listing Rule 4.2A.2A. This effectively requires the accounts to be audited or subject to review and the audit or review report to be given to ASX with the accounts.

<sup>93</sup> Listing Rule 4.3A. Again, mining exploration entities and oil and gas exploration entities are exempt from the requirement to provide an Appendix 4E preliminary final report on the basis that they are required to provide quarterly activity reports under Listing Rules 5.3 and 5.4 and quarterly Appendix 5B cash flow reports under Listing Rule 5.5.

<sup>94</sup> Entities that change their financial reporting year also need to file an Appendix 4F if the transitional period of the change is longer than 12 months. Entities should contact ASX for specific guidance if they are considering a change to their reporting periods.

<sup>95</sup> The documents required to be lodged with ASIC under section 601CK are a balance sheet, cash flow statement, and profit and loss statement.

<sup>96</sup> Listing Rule 4.5.2. The accounts must be audited and the audit report must be given to ASX with the accounts.

<sup>97</sup> Listing Rule 4.5.3. This effectively requires the accounts to be audited and the audit report to be given to ASX with the accounts.

<sup>98</sup> Listing Rule 4.7.

<sup>99</sup> Listing Rules 4.2B and 4.3B.

<sup>100</sup> Listing Rule 4.2B.

<sup>101</sup> Listing Rule 4.5.2.

<sup>102</sup> Listing Rule 4.5.3.

<sup>103</sup> Listing Rules 5.1 and 5.2 respectively.

entity or an oil and gas exploration entity must provide a detailed report of its exploration, development and production activities and certain other information,<sup>104</sup> as well as an Appendix 5B quarterly cash flow report,<sup>105</sup> within one month after quarter end.

An entity admitted under the assets test on the basis of commitments to spend funds<sup>106</sup> will normally be required to provide quarterly activity reports and Appendix 4C cash flow reports within one month after quarter end, for at least the first two years after its listing.<sup>107</sup> Other entities may also be required by ASX to provide quarterly activity reports and Appendix 4C cash flow reports.<sup>108</sup>

The information required by the various ASX reports (Appendices 4C, 4D, 4E, 5A and 5B) does not need to be audited or reviewed unless ASX explicitly requires an audit or review of a specific report. However, the statutory accounts which are part of the half year report must be audited or reviewed and the annual accounts underlying the preliminary final report must be audited. The audit of the annual accounts can be completed after the Appendix 4E Preliminary final report is lodged with ASX.

If these reporting requirements are not met by an ASX Listing, the quotation of its securities will be suspended until the required reports have been given to ASX.<sup>109</sup>

Financial statements given to ASX must be prepared in accordance with Australian Accounting Standards or other standards agreed to by ASX.<sup>110</sup> This applies not only to the periodic financial reports referred to above, but also to other financial statements, such as those included in prospectuses, PDSs, information memoranda and the like. For these purposes, ASX will accept International Financial Reporting Standards (IFRS) as adopted by the EU and the accounting standards and generally accepted accounting principles applied in Bermuda, Canada, Cayman Islands, Hong Kong, New Zealand, Singapore, South Africa, UK and USA as acceptable standards for these purposes. Entities that wish to use any other accounting standards in preparing financial statements must apply to ASX for advice as to whether those standards are acceptable to ASX.

If an entity wishes to use accounting standards in the preparation of its financial statements which ASX considers are not acceptable, ASX will generally require it to attach a statement reconciling the financial information in those statements to the equivalent financial information prepared using either Australian Accounting Standards or IFRS.

Similarly, the audit/review standards applied to any audited/reviewed accounts that are required to be lodged with ASX must be Australian Auditing Standards or other standards agreed to by ASX.<sup>111</sup> ASX will accept International Standards on Auditing or US Auditing Standards as acceptable standards for these purposes. Entities which wish to use any other audit/review standards must apply to ASX for advice as to whether those standards are acceptable to ASX.

Foreign companies listing on ASX should note that the discussion above only addresses their financial reporting obligations under the ASX Listing Rules. They should also have regard to their financial reporting obligations under the Corporations Act, discussed in further detail in '5.1 Registration as a foreign company under the Corporations Act' below.<sup>112</sup>

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<sup>104</sup> Listing Rules 5.3 and 5.4 respectively.

<sup>105</sup> Listing Rule 5.5.

<sup>106</sup> Listing Rule 1.3.2(b).

<sup>107</sup> Listing Rules 4.7B and 4.7C.

<sup>108</sup> See section 15 in Guidance Note 23 *Quarterly Reports*.

<sup>109</sup> Listing Rule 17.5.

<sup>110</sup> Listing Rule 19.11A(b).

<sup>111</sup> Listing Rule 19.11A(c) and (d).

<sup>112</sup> See the text following note 132 below.

### 3.7 Financial documents given by a dual listed entity to an overseas exchange

In addition to the accounts and other documents it must give to ASX under chapters 4 and 5 of the Listing Rules, an entity with a dual listing on the ASX and an overseas securities exchange must immediately give to ASX a copy of any document it gives to the overseas exchange that meets the following requirements:

- the document is given to the overseas stock exchange by the entity in its capacity as an entity listed on that exchange;
- the document is, or will be, made public by the overseas stock exchange;
- the document includes accounts or other similar financial information; and
- the document is not materially the same as another document that the entity has already given to ASX.<sup>113</sup>

Such documents, if not in English, must be accompanied by an English translation.<sup>114</sup>

### 3.8 Information about substantial holdings

The provisions of the Corporations Act dealing with notification of substantial holdings do not apply to entities established outside Australia. To ensure that the market is properly informed of such matters, the Listing Rules require an entity not established in Australia to give to ASX:

- a copy of a document it receives about a substantial holdings of securities under any overseas law or provisions in the entity's constitution equivalent to Part 6C.1 of the Corporations Act;<sup>115</sup> and
- a copy of a document it receives about a substantial holding of securities under any overseas law or provisions in the entity's constitution equivalent to Part 6C.2 of the Corporations Act that reveals materially different information to the most current information it has received (if any) about that substantial holding under the overseas law or provisions in the entity's constitution referred to in the preceding bullet point.<sup>116</sup>

### 3.9 Requisitions from security holders

An entity established in Australia is required to give ASX within two business days of receipt:

- information about the material terms of any notice it receives under certain provisions of the Corporations Act from a holder or holders of securities calling, or requesting the calling of, or proposing to move a resolution at, a general meeting; and
- information that a notice previously notified to ASX under this requirement has been withdrawn by the holder or holders who gave it.<sup>117</sup>

<sup>113</sup> Listing Rule 3.17B.

<sup>114</sup> Listing Rule 15.2A. If the announcement is being made under Listing Rules 3.1 or 3.1B and the preparation of an English translation is likely to take some time, to meet the requirement to disclose information immediately, the entity should lodge the original foreign language version with a short summary in English of the material contents of the document and then lodge the translation as soon as it reasonably can thereafter.

<sup>115</sup> Listing Rule 3.17.3. Part 6C.1 of the Corporations Act requires the disclosure of substantial (5%+) holdings of voting securities in listed entities established in Australia. A person who gives a substantial holding notice to an entity established in Australia under Part 6C.1 of the Corporations Act is required to give a copy of that notice to ASX (section 671B(1)) and therefore it is not necessary for the entity to give a separate copy of that notice to ASX. Hence there is no equivalent to Listing Rule 3.17.3 for entities established in Australia.

<sup>116</sup> Listing Rule 3.17.4. Part 6C.2 of the Corporations Act empowers a listed entity established in Australia to serve "tracing notices" to uncover the ultimate beneficial owner/controller of voting securities in the entity. Listing Rule 3.17.2 requires an Australian entity to give ASX a copy of a document it receives about a substantial holding of securities under Part 6C.2 of the Corporations Act that reveals materially different information to the most current information (if any) it has received about that substantial holding under Part 6C.1 of the Corporations Act.

<sup>117</sup> Listing Rule 3.17A. The specific provisions referenced in that rule are sections 249D, 249F, 249N, 252B, 252D or 252L of the Corporations Act.

An entity not established in Australia is required to give equivalent information in relation to any notice it receives under any equivalent overseas law or equivalent provisions in the entity's constitution.

### 3.10 Information about material changes in the rights and obligations of security holders

Material changes to the provisions of the Corporations Act conferring rights or imposing obligations on the holders of securities in entities established in Australia are likely to be a matter of such public notoriety that investors trading in those securities on ASX can be presumed to be aware of those changes. The same may not be true, however, of changes in the rights or obligations of security holders in an entity not established in Australia under the law of its home jurisdiction.

To ensure that the market is properly informed of such matters, the Listing Rules require an entity not established in Australia, if it becomes aware of a change to the law of its home jurisdiction that materially affects the rights or obligations of security holders, to give ASX details of that change immediately.<sup>118</sup>

Examples of the types of matters that would need to be notified to ASX in this regard include any material change to the law of its home jurisdiction in terms of:

- the types of transactions that require security holder approval;
- the right of security holders to request or requisition a meeting of security holders;
- the right of security holders to appoint proxies to attend and vote at meetings on their behalf;
- how changes in the rights attaching to securities are regulated;
- the right of security holders to seek relief for oppressive conduct;
- the right of security holders to bring or intervene in legal proceedings on behalf of the entity;
- the adoption of, or any material change to, any equivalent to the "two strikes" rule in relation to remuneration reports in Part 2G.2 Division 9 of the Corporations Act; or
- how the disclosure of substantial holdings and takeovers are regulated.

## 4. ASX Debt Listings

### 4.1 Admission requirements

A foreign entity seeking an ASX Debt Listing is subject to the same admission requirements as an Australian entity, irrespective of whether it is already listed on another securities exchange. Detailed information about those requirements can be found in Guidance Note 29 *Applying for Admission – ASX Debt Listings*.

A foreign entity must also satisfy the following additional requirements:

- ASX must be satisfied that the entity complies with its constitution and the laws that govern it and the Listing Rules (or their equivalent) of its overseas home exchange (if any);<sup>119</sup>
- if it is a foreign company, it must be registered as a foreign company carrying on business in Australia under the Corporations Act;<sup>120</sup> and

<sup>118</sup> Listing Rule 3.17C.

<sup>119</sup> Listing Rule 1.8 condition 6.

<sup>120</sup> Listing Rule 1.8 condition 7. See also '5.1 Registration as a foreign company under the Corporations Act' on page 23.

- if it is a foreign trust<sup>121</sup> which has as its responsible entity an entity which is not an Australian company, its responsible entity must be registered as a foreign company carrying on business in Australia under the Corporations Act.<sup>122</sup>

To meet the first requirement above, ASX will generally require a legal opinion from a reputable law firm in the applicant's home jurisdiction which is satisfactory to ASX and which confirms that the applicant is validly existing in that jurisdiction and that the business it carries on complies with its constitution, the laws of that jurisdiction and, if it is listed on an overseas stock exchange, the listing rules (or their equivalent) of that exchange.

### 4.2 Prospectus requirements for retail debt securities

Guidance Note 29 *Applying for Admission – ASX Debt Listings* has further information about certain Corporations Act requirements that apply to retail debt securities, including the requirement to have lodged a prospectus in relation to the securities with ASIC. As noted in that Guidance Note, ASX expects the prospectus for a foreign entity to include:

- a statement of its place of incorporation or registration; and
- a statement to the effect that:

“As [*name of entity*] is not established in Australia, its general corporate activities (apart from any offering of securities in Australia) are not regulated by the Corporations Act 2001 of the Commonwealth of Australia or by the Australian Securities and Investments Commission but instead are regulated by [*insert name of governing legislation*] and [*insert name of corporate regulator administering that legislation*].”

## 5. Common issues relevant to foreign entities seeking any listing on ASX

### 5.1 Registration as a foreign company under the Corporations Act

As mentioned previously, a foreign company which is seeking any type of listing on ASX must be registered as a foreign company carrying on business in Australia for the purposes of the Corporations Act.<sup>123</sup>

Likewise, the responsible entity of a foreign trust<sup>124</sup> which is seeking any type of listing on ASX must, if it is not an Australian company, be registered as a foreign company carrying on business in Australia under the Corporations Act.<sup>125</sup>

The process to register as a foreign company, and the obligations that apply to registered foreign companies, are set out in Part 5B.2 Division 2 of the Corporations Act.

Among other things, to register as a foreign company under the Corporations Act, an entity must appoint a local agent in Australia who is authorised to accept service of process and notices on behalf of the entity.<sup>126</sup> ASIC has prescribed a form of Memorandum of Appointment of Local Agent for these purposes.<sup>127</sup>

<sup>121</sup> “Foreign trust” means a trust or similar overseas entity that is not formed or established in Australia and that is not a registered managed investment scheme under the Corporations Act (Listing Rule 19.12).

<sup>122</sup> Listing Rule 1.8 condition 8(d).

<sup>123</sup> Listing Rule 1.1 condition 4 (ASX Listing), Listing Rule 1.8 condition 7 (ASX Debt Listing) and Listing Rule 1.11 condition 7 (ASX Foreign Exempt Listing).

<sup>124</sup> As defined in note 121 above. A foreign trust that wishes to list on ASX in any category of listing also has the option to register as a managed investment scheme under the Corporations Act. This effectively converts it into an Australian trust for the purposes of the Listing Rules (see the definition of “Australian trust” in Listing Rule 19.12).

<sup>125</sup> Listing Rule 1.1 condition 5(b) (ASX Listing), Listing Rule 1.8 condition 8(d) (ASX Debt Listing) and Listing Rule 1.11 condition 8(a) (ASX Foreign Exempt Listing).

<sup>126</sup> Section 601CF(2) of the Corporations Act. The name and address of the entity's local agent must be notified to ASX in the *Information Form and Checklist* lodged with the applicant's application for listing on ASX.

<sup>127</sup> ASIC Form 418, available online at: [http://download.asic.gov.au/media/2948596/418\\_v2.pdf](http://download.asic.gov.au/media/2948596/418_v2.pdf).

Registration as a foreign company carrying on business in Australia brings with it a number of regulatory obligations, including:

- to have a registered office in Australia to which communications and notices may be addressed that is open between certain hours and at which a representative of the company is present at all times the office is open;<sup>128</sup>
- to display its name and its place of origin in a conspicuous position and in legible characters outside its registered office and every office and place of business in Australia that is open and accessible to the public;<sup>129</sup>
- to display its name, its Australian Registered Body Number (ARBN), its place of origin and, if the liability of the members is limited and the last word of its name is neither 'Limited' nor 'Ltd.', notice of the fact that the liability of its members is limited on:
  - every public document issued, signed or published by or on behalf of the company in Australia; and
  - every negotiable instrument signed or issued by or on behalf of the company in Australia;<sup>130</sup>
- to retain a local agent who is answerable for the doing of all acts, matters and things that the company is required to do by or under the Corporations Act;<sup>131</sup>
- unless exempted by ASIC,<sup>132</sup> to lodge with ASIC at least once every calendar year and at intervals of not more than 15 months<sup>133</sup> financial statements comprising a copy of the company's balance sheet, profit and loss statement and cash flow statement (all made up to the end of the last financial year), together with a Form 405 *Statement to verify financial statements of a foreign company*.<sup>134</sup> These documents must be in such form, contain such particulars and include copies of such documents as the company *is required to prepare under the law applicable in its place of origin* (emphasis added).<sup>135</sup>

Where a registered foreign company is not required by the law applicable in its place of origin to prepare a balance sheet, profit and loss statement and/or cash flow statement, the company must prepare and lodge that financial statement, within such period, in such form, containing such particulars and including such documents as the company would have been required to prepare if the company were an Australian public company. ASIC can, and in the case of a listed company usually will, require the financial statement in

<sup>128</sup> See section 911D.

<sup>129</sup> Section 601CW.

<sup>130</sup> Section 601DE. The company must also display its ARBN on all documents required to be lodged with ASIC under the Corporations Act: Corporations Regulations 1.0.07 – 1.0.10.

<sup>131</sup> Section 601CF.

<sup>132</sup> ASIC may declare a registered foreign company to be exempt from these financial reporting requirements: see section 601CK(7) and (8) and ASIC Regulatory Guide 58 *Reporting requirements—Registered foreign companies and Australian companies with foreign company shareholders*. An exempt registered foreign company must lodge a Form 406 *Annual return of a foreign company*, instead of the financial statements referred to in the text above, at least once in every calendar year. The annual return must be made up to the date of the company's annual general meeting and lodged with ASIC within 1 month after the date to which it is made up, or within such further period as ASIC, in special circumstances, allows (section 601CK(9) and (10)).

<sup>133</sup> ASIC may extend the period for lodgement of these documents (section 601CK(2)).

<sup>134</sup> Section 601CK(1). When a foreign company that holds an Australian Financial Services Licence lodges its financial statements with ASIC, it can either: (a) rely on *ASIC Corporations (Foreign Licensees and ADIs) Instrument 2016/186* and lodge a Form 405 (in which case it must include an auditor's report with this form); or (b) lodge Forms FS70 *Australian financial services licensee profit and loss statement and balance sheet* and FS71 *Auditor's report for AFS licensee*.

<sup>135</sup> If ASIC is of the opinion that these documents do not sufficiently disclose a registered foreign company's financial position, ASIC can require the company to lodge a balance sheet, profit and loss statement and/or cash flow statement within such period, in such form, containing such particulars and including such documents as ASIC by notice in writing to the company requires (section 601CK(3)). The registered foreign company must comply with the requirements set out in the notice (section 601CK(4)). However, ASIC cannot require a balance-sheet or a profit and loss statement to contain any particulars or include any documents that would not be required to be given if the company were an Australian public company (section 601CK(3)).



question to be audited.<sup>136</sup> This will effectively require the company to prepare the financial statements it is required to lodge with ASIC in accordance with Australian Accounting Standards and, if ASIC requires them to be audited (which it usually will in the case of an ASX listed foreign company), to have them audited in accordance with Australian Auditing Standards.

ASX understands that some US corporations are not required by the law of the US State in which they are incorporated to prepare and lodge accounts with their local corporations' office. If they are also not required to prepare and lodge accounts with the US Securities and Exchange Commission,<sup>137</sup> they will fall within the preceding paragraph. Likewise, ASX understands that some companies incorporated in "low disclosure" regimes, such as Bermuda, Cayman Islands and the British Virgin Islands, are not required to prepare and lodge accounts with their local companies' office and they too will fall within the preceding paragraph. Hence, on the face of it, they will be required under the Corporations Act to prepare and lodge with ASIC accounts prepared under Australian Accounting Standards and audited under Australian Auditing Standards.

ASX understands that ASIC is prepared to consider on a case-by-case basis granting relief to a foreign entity in this situation from the Corporations Act requirement to lodge accounts prepared under Australian Accounting Standards and audited under Australian Auditing Standards and instead allow it to lodge accounts prepared under its local accounting standards and audited under its local auditing standards.<sup>138</sup>

Companies in this position that wish to prepare their accounts under their local accounting standards and have them audited under their local auditing standards<sup>139</sup> should approach ASIC to investigate whether ASIC will be prepared to grant such relief to them.

It should be noted that the laws regulating registered foreign companies carrying on business in Australia fall within the regulatory remit of ASIC. Any questions about those laws should be directed to ASIC rather than ASX.

Further information about the process for registering as a foreign company and the ongoing obligations that apply to registered foreign companies can be found on the ASIC website at: <https://asic.gov.au/for-business/registering-a-company/steps-to-register-a-company/foreign-companies/>.

## 5.2 Appointment of person responsible for communications with ASX

Every foreign entity listed on ASX, whether as an ASX Listing, an ASX Foreign Exempt Listing or an ASX Debt Listing, must nominate at least one person<sup>140</sup> to be responsible<sup>141</sup> for communication with ASX in relation to Listing Rule matters.<sup>142</sup> The person appointed must be able to communicate in English.

From time to time, ASX may need to discuss with a listed entity pressing matters (particularly, but not only, disclosure matters) under the Listing Rules. To facilitate this, it is important that the person (or each of the persons) appointed to be responsible for communications with ASX in relation to Listing Rule matters:

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<sup>136</sup> Sections 601CK(5), (5A) and (6).

<sup>137</sup> For example, via a Form 10-K.

<sup>138</sup> See paragraphs 72-75 of ASIC Report 664 *Overview of decisions on relief applications (October 2019 to March 2020)*, available online at <https://download.asic.gov.au/media/5638843/rep664-published-23-june-2020.pdf>.

<sup>139</sup> Which ASX will generally allow for its purposes provided the local accounting and auditing standards are acceptable (see the text accompanying note 110 above).

<sup>140</sup> An entity may appoint more than one person to be responsible for communications with ASX, to cater for one of its contacts being absent or on leave.

<sup>141</sup> The fact that the person so appointed is said to be "responsible" for communication with ASX in relation to Listing Rule matters does not in any way diminish the responsibility of the listed entity to communicate to ASX any information required under the Listing Rules.

<sup>142</sup> Listing Rule 1.1 condition 13 (ASX Listings), Listing Rule 1.11 condition 9 (ASX Foreign Exempt Listings) and Listing Rule 1.8 condition 9 (ASX Debt Listings). See also Listing Rule 12.6, which imposes an ongoing requirement on all listed entities to appoint a person to be responsible for communication with ASX in relation to Listing Rule matters and to notify ASX of the initial appointment and of any change in the appointment.

The name, address and contact details of the person or persons responsible for communication with ASX in relation to Listing Rule matters must be notified to ASX in the *Information Form and Checklist* lodged with an applicant's application for listing on ASX.

- has the organisational knowledge to have meaningful discussions on Listing Rule matters;
- can request a trading halt and issue an announcement to the market, if that is what is required,<sup>143</sup>

and that person (or at least one of those persons) is readily contactable by ASX by telephone during normal market hours and for at least one hour either side thereof (ie from 9am to 5pm Sydney time) on each day that ASX is trading.<sup>144</sup>

This requires that the person has a high degree of familiarity with the listed entity's operations and, if they are not a member of senior management, that they have immediate access to senior management. It also requires them to provide ASX with a mobile phone number to contact them and that they keep their mobile phone switched on at all times from 9am to 5pm Sydney time on each trading day.

The need to resolve a disclosure issue under the Listing Rules can be extremely time critical. Where such an issue arises, if ASX is not able to contact an entity's nominated representative on Listing Rule matters, or the representative does not have the organisational knowledge or authority to address the issue promptly, ASX may be left with little option but to suspend the quotation of the entity's securities until the issue can be properly resolved.

### 5.3 Electronic lodgement of announcements

Every foreign entity listed on ASX, whether as an ASX Listing, an ASX Foreign Exempt Listing or an ASX Debt Listing, must establish facilities for electronically lodging announcements with the ASX Market Announcements office.<sup>145</sup>

In practice, this requirement is met by the entity executing an *Application and agreement for use of electronic lodgement facility and entity details facility* ("ASX Online Agreement") in the form set out in the attachment to Guidance Note 20 *ASX Online*. An editable version of the ASX Online Agreement can be downloaded from <http://www.asx.com.au/regulation/compliance/compliance-downloads.htm>. These are standard form agreements and ASX will not agree to any changes. Hence, any edits to the ASX Online Agreement should be confined to inserting the date of the agreement and the details of, and an appropriate execution clause for, the applicant.

A signed copy of the ASX Online Agreement, duly executed by the applicant, should accompany its listing application.

Further guidance on the use of ASX's electronic lodgement facilities can be found in Guidance Note 20 *ASX Online*.

### 5.4 Clearing and settlement

Trades in securities quoted on the ASX market are cleared and settled through an electronic system called the Clearing House Electronic Subregister System, or CHES. CHES facilitates the paperless transfer of ownership of securities through an electronic subregister system.

<sup>143</sup> ASX acknowledges that the decision to request a trading halt is a serious one and that a listed entity will often have approval processes that need to be followed before a person appointed under Listing Rule 12.6 to be responsible for communications with ASX in relation to Listing Rule matters will have the authority to request a trading halt. For example, many entities typically require such a request to be approved by the chairperson and/or the CEO. If an entity has such approval processes in place, they must be able to be activated and any necessary approvals obtained within a matter of minutes. They should also include appropriate contingencies for when key approvers are not available. As noted in the text, where there is a time critical continuous disclosure issue and a trading halt is warranted, any delay in requesting the trading halt could result in ASX being left with little choice but to suspend the quotation of the entity's securities. It could also result in regulatory action by ASIC (see ASIC Media Release 08-117).

<sup>144</sup> This requires the nominated representative to be available to take calls from ASX, if they are based in Western Australia, from as early as 6am (WA time) during summer time and 7am (WA time) at other times and, if they are based in New Zealand, until as late as 7pm (NZ time). They must also be available to take calls from ASX on trading days that fall on a public holiday where they live and make suitable arrangements to cover any absences due to illness or while they are on leave.

<sup>145</sup> Listing Rule 1.1 condition 14 (ASX Listings), Listing Rule 1.11 condition 10 (ASX Foreign Exempt Listings) and Listing Rule 1.8 condition 10 (ASX Debt Listings). See also Listing Rule 8.2.

Under CHESS, a listed entity's principal register of securities is effectively made up of two electronic uncertificated subregisters – a "CHESS subregister" maintained by ASX Settlement<sup>146</sup> and an "issuer sponsored subregister" maintained by or on behalf of the issuer. Persons holding securities in the entity have the option to register their securities on either subregister.<sup>147</sup>

Ordinarily, to allow ASX to clear and settle transactions in its securities, an entity seeking admission to the ASX official list must be approved as an issuer under the operating rules<sup>148</sup> of the CHESS facility<sup>149</sup> and also have the securities it is seeking to have quoted on ASX approved for participation in that facility.<sup>150</sup> Once these approvals have been obtained, ASX Settlement will then establish the CHESS subregister for its securities, which ASX Settlement will administer as the entity's agent.<sup>151</sup> The entity is responsible for establishing its own issuer sponsored subregister for its securities<sup>152</sup> and, in practice, will usually engage an Australian registry to establish and administer that subregister on its behalf.

Where, however, an entity is established in an overseas jurisdiction whose laws have the effect that CHESS cannot be used for holding legal title to its securities, it must instead have CHESS Depository Interests, or CDIs, issued over its ASX quoted securities and establish a CHESS subregister and an issuer sponsored subregister in those CDIs.<sup>153</sup> To issue CDIs, the entity must be approved as a foreign issuer of CDIs under the operating rules of the CHESS facility<sup>154</sup> and also have its CDIs approved for participation in that facility.<sup>155</sup> Once these approvals have been obtained, ASX Settlement will then establish the CHESS subregister for its CDIs, which ASX Settlement will administer as the entity's agent. The entity must establish its own issuer sponsored subregister for its CDIs<sup>156</sup> and, again, in practice, will usually engage an Australian registry to establish and administer that subregister on its behalf.

An entity's Appendix 1A, 1B or 1C application form not only operates as an application to be admitted to the official list of ASX but also as an application by the entity for the requisite approvals under the operating rules of the CHESS facility.<sup>157</sup>

It should be noted that ASX's CDI facility can only be availed of by an entity that is established in a place overseas whose laws have the effect that CHESS cannot be used for holding legal title to its securities.<sup>158</sup> An entity that is

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<sup>146</sup> ASX Settlement Pty Limited, a wholly owned subsidiary of ASX and the operator of the ASX Settlement facility.

<sup>147</sup> To register securities on the CHESS subregister, a person must have a sponsorship agreement with a participant in the ASX Settlement facility. Registering securities on the CHESS subregister effectively gives the sponsoring participant control of the holdings for the purposes of settlement.

<sup>148</sup> References to the operating rules of the CHESS facility mean the ASX Settlement Operating Rules.

<sup>149</sup> Listing Rule 1.1 condition 15(a) (ASX Listings), Listing Rule 1.11 condition 12(a) (ASX Foreign Exempt Listings) and Listing Rule 1.8 condition 11(a) (ASX Debt Listings).

<sup>150</sup> Listing Rule 2.1 condition 3(a) (ASX Listings and ASX Debt Listings), Listing Rule 2.2(a) (ASX Foreign Exempt Listings) and ASX Settlement Operating Rule 8.1.1. Once its securities have been approved for participation in the CHESS system, an entity must continue to comply with the operating rules for that system in relation to its quoted securities (Listing Rule 8.1).

<sup>151</sup> Pursuant to ASX Settlement Operating Rules 8.1.3, 8.6.1 and 8.6.2.

<sup>152</sup> Listing Rule 8.2(a).

<sup>153</sup> Listing Rule 8.2(b) and ASX Settlement Operating Rule 13.5.4. CDIs are a type of depository receipt that allow investors to obtain all the economic benefits of owning securities without actually holding legal title to them. They were developed by ASX to facilitate the clearing and settlement of transactions in securities through CHESS where the issuing entity is domiciled in a country whose laws do not recognise uncertificated holdings or electronic transfer of title. For further guidance on CDIs, see Guidance Note 5 *CHESS Depository Interests (CDIs)*.

<sup>154</sup> Listing Rule 1.1 condition 15(b) (ASX Listings), Listing Rule 1.11 condition 12(b) (ASX Foreign Exempt Listings) and Listing Rule 1.8 condition 11(b) (ASX Debt Listings).

<sup>155</sup> Listing Rules 2.1 condition 3(b) (ASX Listings and ASX Debt Listings) and 2.2(b) (ASX Foreign Exempt Listings). See also ASX Settlement Operating Rule 13.2.1.

<sup>156</sup> Listing Rule 8.2.

<sup>157</sup> ASX Settlement Operating Rule 8.1.1 and Procedure 8.1.1.

<sup>158</sup> At the date of this Guidance Note, ASX understands that New Zealand, Papua New Guinea, Israel and Bermuda all allow CHESS to be used for holding legal title to securities in entities established in those countries (although, in the case of Israel, ASX understands that this requires a provision in the entity's constitution [to the effect that a shareholder is not entitled to a share certificate](#)). Entities established in those countries are therefore able to, and must, have their securities traded directly on the ASX market without using CDIs.

established in a place overseas whose laws allow CHESS to be used for holding legal title to its securities must have its securities (rather than CDIs) approved for participation in CHESS.<sup>159</sup> If there is any doubt on this issue, ASX may ask the entity to provide an opinion from a legal practitioner in the overseas jurisdiction acceptable to ASX to clarify that doubt.

### **5.5 Foreign regulatory approvals**

Some foreign jurisdictions restrict the listing of their domestic entities on foreign exchanges. An entity incorporated or registered in one of these jurisdictions seeking to list on ASX should get any necessary approval before applying to be listed and give ASX evidence of the approval when making its application.

### **5.6 Governing law**

Listing Rules 19.2A and 19.2B provide for the listing agreement between ASX and a listed entity to be governed by the law of New South Wales and for ASX and listed entities to submit to the jurisdiction of the courts of New South Wales (New South Wales is the State of Australia in which ASX has its principal office).

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<sup>159</sup> This is the combined effect of Listing Rule 1.1 condition 15, Listing Rule 2.1 condition 3 and Appendix 1A clauses 11 and 12 (for ASX Listings); Listing Rule 1.8 condition 11, Listing Rule 2.1 condition 3 and Appendix 1B clauses 11 and 12 (for ASX Debt Listings); and Listing Rule 1.11 condition 12, Listing Rule 2.2 and Appendix 1C clause 12 and 13 (for ASX Foreign Exempt Listings).