

### WAIVERS AND IN-PRINCIPLE ADVICE

<p><b>The purpose of this Guidance Note</b></p>	<ul style="list-style-type: none"> <li>To assist listed entities and entities applying for admission to the official list of ASX to understand how ASX deals with applications for waivers of, and requests for in-principle advice in relation to, the Listing Rules.</li> </ul>
<p><b>The main points it covers</b></p>	<ul style="list-style-type: none"> <li>ASX's power to waive a Listing Rule</li> <li>The decision-making principles that ASX applies when considering a waiver application</li> <li>How to apply for a waiver</li> <li>The usual timetable for waiver decisions</li> <li>The publication of waiver decisions</li> <li>In-principle advice on the application of a listing rule to a particular situation or on ASX's preparedness to grant a particular waiver</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 4 <i>Foreign Entities Listing on ASX</i></li> <li>Guidance Note 12 <i>Significant Changes to Activities</i></li> <li>Guidance Note 29 <i>Applying for Admission – ASX Debt Listings</i></li> <li>Guidance Note 30 <i>Notifying Changes in Issued Securities and Applying for Quotation of New or Additional 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.

### Table of Contents

1. Introduction	2
2. ASX's waiver powers	2
3. The principles applied by ASX when considering waiver requests	2
4. Standard vs non-standard waivers	3
5. Preliminary discussions with ASX on non-standard waivers	3
6. Applications for waivers	3
7. Reasons for decision	5
8. Timetable for decision	5
9. Publication of waivers	5
10. Applications for in-principle advice on suitability for listing	6
11. Other applications for in-principle advice by applicants for listing	6
12. Applications for in-principle advice on suitability for re-admission	7
13. Other applications for in-principle advice by listed entities	7
14. The form and contents of an application for in-principle advice	8
Annexure: Standard waivers	10

## 1. Introduction

This Guidance Note is published to assist listed entities and entities applying for admission to the official list of ASX Limited ("ASX") to understand how ASX deals with applications for waivers of, and requests for in-principle advice in relation to, the Listing Rules.

## 2. ASX's waiver powers

Listing Rule 18.1 empowers ASX at any time to waive a Listing Rule, or part of a Listing Rule, unless the rule specifies that ASX will not waive it. ASX may do so on conditions and, if it does so, all of the conditions must be complied with for the waiver to be effective.<sup>1</sup>

ASX may vary or withdraw a waiver at any time.<sup>2</sup>

## 3. The principles applied by ASX when considering waiver requests

As acknowledged in the introduction to the Listing Rules:

*"The Listing Rules necessarily cast a wide net. However, ASX does not want to inhibit legitimate commercial transactions that do not undermine the principles on which the Listing Rules are based."*

In deciding whether or not to grant, and what conditions ought to be imposed on, a waiver, ASX will have regard to the following principles:

- to justify the waiver, the applicant must demonstrate that it will suffer commercial detriment or other disadvantage if the waiver is not granted;
- ASX must be satisfied that granting the waiver is consistent with:
  - ASX's statutory obligations as a licensed market operator;
  - the principles on which the Listing Rules are based (as outlined in the introduction to the Listing Rules); and

<sup>1</sup> Listing Rule 18.1. ASX may do these things on the application of an entity or of its own accord. It may also grant a waiver in relation to a specific entity or class of entities or in relation to all entities generally.

<sup>2</sup> Listing Rule 18.3.

- the policy underlying the particular rule sought to be waived,  
and that it will not adversely affect the reputation, integrity or efficiency of the ASX market.

Waivers will not be granted retrospectively.

Where appropriate, ASX may impose an expiry date on a waiver. This affords ASX an opportunity to review the ongoing need for, and appropriateness of, continuing the waiver.

#### **4. Standard vs non-standard waivers**

ASX has streamlined processes and requirements for requests for standard waivers compared to requests for non-standard waivers.

A list of standard waivers appears in the annexure to this Guidance Note. These are waivers that ASX considers are consistent with the principles on which the Listing Rules are based or the policy underlying the particular rule in question. ASX will generally grant a standard waiver upon request and without requiring detailed submissions in support of the application.

A non-standard waiver is any other form of waiver that does not appear in the list in the annexure to this Guidance Note.

ASX reserves the right to treat an application as a non-standard waiver notwithstanding that the waiver sought appears in the list of standard waivers in the annexure if, in ASX's view, the circumstances of the particular application warrant this treatment. This may require the applicant to provide additional information and detailed submissions in support of the application.

#### **5. Preliminary discussions with ASX on non-standard waivers**

Before submitting a formal application for a non-standard waiver of the Listing Rules, ASX recommends that applicants first discuss the matter with ASX Listings Compliance:

- in the case of a listed entity, at its home branch; or
- in the case of an entity applying for admission to the official list, at the ASX branch where the entity has lodged, or intends to lodge, its application for admission.

ASX Listings Compliance will be able to provide general advice on the waiver process and a preliminary view on:

- the likelihood of a particular waiver being granted;
- the likely timetable for a decision on a waiver application, given the nature and complexity of the application and the current workloads within ASX Listings Compliance; and
- whether it is appropriate for the applicant to request in-principle advice on the waiver application (see below) ahead of making the formal waiver application.

#### **6. Applications for waivers**

An application for a waiver must be in writing and submitted by the applicant or a professional adviser acting on behalf of the applicant. It should be addressed to ASX Listings Compliance:

- in the case of a listed entity, at the home branch of the listed entity; or
- in the case of an entity applying for admission to the official list, at the ASX branch where the entity has lodged, or intends to lodge, its application for admission.

The application should be clearly marked “Not for public release”.<sup>3</sup>

In the case of a standard waiver, the application should include a brief explanation of the transaction, event or circumstance giving rise to the need for the waiver and identify the specific waiver in the annexure to this Guidance Note which is being sought.

In the case of a non-standard waiver, unless the applicant has already received in-principle advice that ASX will grant the waiver,<sup>4</sup> the application should include:

- the specific Listing Rule or Rules to be waived;<sup>5</sup>
- an explanation of the transaction, event or circumstance giving rise to the need for the waiver;
- the reason for requesting the waiver, including an explanation of the commercial ramifications if the waiver is not granted;
- where applicable, the start and end date of the requested waiver;
- if the waiver relates to an issue of securities, the entity’s capital structure before and after the issue of securities; and
- if the waiver relates to a transaction involving a related party<sup>6</sup> of, or another party in a position of influence<sup>7</sup> in relation to, the listed entity, full details of the relationship between that party and the listed entity.

In the case of a non-standard waiver, this information should be provided in sufficient detail to enable ASX to fully assess the application and to be satisfied that giving the waiver requested is consistent with the principles on which the Listing Rules are based and will not compromise the underlying policy of the rule or rules in question. ASX may reject or defer consideration of an application for a non-standard waiver that does not include this information in sufficient detail.

The onus is on the applicant for a non-standard waiver to establish that there is a sufficiently strong commercial case to justify the granting of the waiver and that granting the waiver:

- is consistent with the statutory obligations imposed on ASX as a licensed market operator;
- will not undermine the principles on which the Listing Rules are based or the policy underlying the particular rule sought to be waived; and
- will not otherwise adversely affect the reputation of the markets ASX operates, to the detriment of listed entities and investors alike.

In this regard, it is helpful if the application for a non-standard waiver identifies any previous waiver decisions that have been made by ASX in analogous circumstances, together with an explanation as to why those particular decisions are considered relevant to the application.<sup>8</sup> In saying this, however, it should be noted that waivers are

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<sup>3</sup> Listing Rule 15.6.

<sup>4</sup> In which case, the application for the waiver can simply reference the in-principle advice received from ASX and confirm that the facts outlined in the request for the in-principle advice have not changed (see sections 10, 13 and 14 below).

<sup>5</sup> ASX will not accept an application for a waiver from “any applicable” Listing Rules or from the Listing Rules generally.

<sup>6</sup> As defined in Listing Rule 19.12.

<sup>7</sup> That is, a party referred to in Listing Rules 10.1, 10.11 or 10.14.

<sup>8</sup> Users of ASX Online – Listed Entities can search a database of ASX Listing Rule waivers going back to 1 January 2004. To access the search function, you must log on to ASX Online – Listed Entities. In the drop down menu under “Listing Rules”, select “Search ASX Waivers Registry”. You can search by rule number, ASX code, company name or period (or a combination of these).

Copies of previous waiver decisions by ASX can also be viewed in the waivers register. To access the waivers register, click on the “Waivers” tab at <https://www2.asx.com.au/about/regulation/rules-guidance-notes-and-waivers/asx-listing-rules-guidance-notes-and-waivers>.

granted on a case-by-case basis and the fact that ASX has granted a waiver in circumstances which the applicant considers analogous to its own does not guarantee that ASX will grant a similar waiver to the applicant.

### 7. Reasons for decision

Following its consideration of an application for a waiver, ASX will inform the applicant in writing of its decision on whether or not to grant the waiver and the basis for that decision.

If the waiver is granted, the decision will set out the details of the waiver granted, including any applicable conditions.

In the case of a standard waiver, the basis for decision will typically state that the waiver granted is a standard one granted upon request under this Guidance Note and nothing more.

In the case of a non-standard waiver, the basis for decision will set out the underlying policy behind the Listing Rule that is being waived and why it is considered that the waiver does not offend that policy. This may include excerpts from the materials in support of the application provided by the applicant.

If the waiver is not granted, the decision will state that fact and the reason why the waiver has been refused. For example, this might be because the applicant has not made out a sufficiently strong commercial case to justify the grant of the waiver or because ASX considers that granting the waiver would undermine the underlying policy reason for the Listing Rule sought to be waived.

### 8. Timetable for decision

ASX aims to advise an applicant for a waiver of its decision:

- if the application seeks a standard waiver or waivers only, within 10 business days of accepting the application; or
- otherwise, within 20 business days of accepting the application.

If an applicant for a waiver does not provide the information mentioned in section 6 above with its application or subsequently requests additional or different waivers, ASX may not be able to meet these timeframes.

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

### 9. Publication of waivers

The Listing Rules require that waivers granted by ASX are published from time to time.<sup>9</sup> The publication of waivers facilitates the transparency of decisions made by ASX.

Details of waivers granted are usually published on the ASX website twice monthly in the form of a waivers register.<sup>10</sup> The waivers register includes the name of the entity which received the waiver, the terms and conditions of the waiver and brief reasons why it was granted.

ASX is also required to report all waivers of the Listing Rules it grants to the Australian Securities and Investments Commission (“ASIC”) under a memorandum of understanding between ASIC and ASX.

<sup>9</sup> Listing Rule 18.1 (last sentence).

<sup>10</sup> See the “Waivers” tab at <https://www2.asx.com.au/about/regulation/rules-guidance-notes-and-waivers/asx-listing-rules-guidance-notes-and-waivers>.

If the timing of public disclosure of a waiver is cause for concern (for example, for reasons of commercial sensitivity), an applicant for a waiver should consider seeking in-principle advice (see below) in the first instance and then making a formal application for the waiver at a more appropriate time.

For privacy reasons, the names of individuals who are involved in or affected by a waiver will not generally be published in the waivers register, unless the information is in the public domain. References to such individuals will usually be replaced by “Person A” or something similarly anonymous.

### 10. Applications for in-principle advice on suitability for listing

Applicants applying for admission to the official list as an ASX listing should note the guidance in section 2.2 of Guidance Note 1 *Applying for Admission – ASX Listings* on when and how to apply to ASX for in-principle advice on their suitability for admission to the official list under Listing Rule 1.1 condition 1<sup>11</sup> and/or Listing Rule 1.19,<sup>12</sup> and the basis on which ASX provides such advice

There is a prescribed form for this type of application, an editable version of which can be downloaded from the ASX website at:

<https://www2.asx.com.au/about/regulation/rules-guidance-notes-and-waivers/asx-compliance-downloads>.

The application should be addressed to ASX Listings Compliance at the ASX branch where the entity intends to lodge its listing application.

ASX charges a fixed fee of \$5,000 (plus GST)<sup>13</sup> for providing in-principle advice on an applicant’s suitability for admission to the official list. Payment must be made at the time the application for in-principle advice is lodged with ASX.<sup>14</sup> ASX will not commence working on the application until the fee has been paid.

### 11. Other applications for in-principle advice by applicants for listing

Applicants applying for admission to the official list as an ASX listing should also note the guidance in section 2.2 of Guidance Note 1 *Applying for Admission – ASX Listings* on when and how to apply to ASX for in-principle advice on how a particular Listing Rule might apply to it after it is listed or on ASX’s preparedness to grant a waiver of a particular Listing Rule, and the basis on which ASX provides such advice.

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<sup>11</sup> The requirement that an entity seeking admission to the official list as an ASX Listing must satisfy ASX that it has a structure and operations that are appropriate for a listed entity.

<sup>12</sup> ASX’s absolute discretion in deciding whether or not to admit an entity to the official list.

<sup>13</sup> See Listing Rule 16.7 and Schedule 3 of Guidance Note 15A *Schedule of ASX Listing Fees*. If the listing proceeds, this amount will be set off against the entity’s initial listing fee. If the listing does not proceed, ASX will retain the fixed fee of \$5,000 (plus GST) to defray its costs of reviewing the application for in-principle advice.

Note that ASX will only offset one \$5,000 fee (plus GST) for in-principle advice on the applicant’s suitability for admission to the official list under Listing Rule 1.1 condition 1 and Listing Rule 1.19 against its initial listing fee. Where an applicant has made multiple applications, and therefore paid multiple fees, for such advice, ASX will retain the balance of those fees to defray its costs of reviewing the multiple applications.

<sup>14</sup> Payment of the fee can be made either by a cheque 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 entity 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 “fee for in-principle advice” and including the name of the applicant, the home branch (ie Sydney, Melbourne or Perth) where the entity intends to lodge its application and the amount paid.

There is no prescribed form for this type of application. A letter from the entity or its advisers detailing the advice sought and providing the information set out in section 14 of this Guidance Note will suffice. The letter again should be addressed to ASX Listings Compliance at the ASX branch where the entity intends to lodge its listing application.

ASX charges a fixed fee of \$5,000 (plus GST) for providing in-principle advice in advance of, and in connection with, an application for admission to the official list.<sup>15</sup> Payment must be made at the time the application is lodged with ASX.<sup>16</sup> ASX will not commence working on the application until the fee has been paid.

## 12. Applications for in-principle advice on suitability for re-admission

An entity undertaking a re-compliance listing<sup>17</sup> should note the guidance in section 2.10 of Guidance Note 12 *Significant Changes to Activities* on when and how to apply to ASX for in-principle advice on its suitability for re-admission to the official list under Listing Rule 1.1 condition 1 and Listing Rule 1.19 if it proceeds with the proposed transaction that has triggered the need for it to re-comply with ASX's admission and quotation requirements, and the basis on which ASX provides such advice.

Again, there is a prescribed form for this type of application for in-principle advice (it is the same form as an applicant for listing uses for in-principle advice on its suitability for admission to the official list mentioned in section 10 above). An editable version of the form can be downloaded from the ASX website at:

<https://www2.asx.com.au/about/regulation/rules-guidance-notes-and-waivers/asx-compliance-downloads>.

An application for in-principle advice on the applicant's suitability for re-admission to the official list should be addressed to its home branch.

Again, ASX charges a fixed fee of \$5,000 (plus GST)<sup>18</sup> for providing in-principle advice on an applicant's suitability for re-admission to the official list. Payment must be made at the time the application is lodged with ASX.<sup>19</sup> ASX will not commence working on the application until the fee has been paid.

## 13. Other applications for in-principle advice by listed entities

In an appropriate case,<sup>20</sup> ASX may be prepared to give in-principle advice to a listed entity on the application of a Listing Rule to a particular situation or on ASX's preparedness to grant a particular waiver. The former can be

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<sup>15</sup> See Listing Rule 16.7 and Schedule 3 of Guidance Note 15A *Schedule of ASX Listing Fees*. If the listing proceeds, this amount will be set off against the entity's initial listing fee. ASX does not charge a fee for an application for in-principle advice that is made at the same time as, or after, an entity has lodged an Appendix 1A, 1B or 1C application for admission to the official list and paid its initial listing fee in connection with that application.

<sup>16</sup> The account details for payment of the fee are set out in note 14 above.

<sup>17</sup> The term "re-compliance listing" refers to the process a listed entity undergoes where the entity is proposing a significant change to the nature or scale of its activities and ASX exercises its discretion under Listing Rule 11.1.3 to require the entity to meet ASX's requirements for admission and quotation in Chapters 1 and 2 of the Listing Rules as if the entity were applying for admission to the official list. The application the entity lodges for admission to the official list as part of this process is generally referred to as an "application for re-admission" and the point at which the entity is reinstated to quotation having satisfied ASX's admission and quotation requirements is generally referred to as "re-admission".

<sup>18</sup> See Listing Rule 16.7 and Schedule 3 of Guidance Note 15A *Schedule of ASX Listing Fees*. If the re-compliance listing proceeds, this amount will be set off against the entity's initial listing fee. If the listing does not proceed, ASX will retain the fixed fee of \$5,000 (plus GST) to defray its costs of reviewing the application for in-principle advice.

Note that ASX will only offset one \$5,000 fee (plus GST) for in-principle advice on the applicant's suitability for re-admission to the official list under Listing Rule 1.1 condition 1 and Listing Rule 1.19 against its initial listing fee. Where an applicant has made multiple applications, and therefore paid multiple fees, for such advice, ASX will retain the balance of those fees to defray its costs of reviewing the multiple applications.

<sup>19</sup> The account details for payment of the fee are set out in note 14 above.

<sup>20</sup> See, for example, section 2.7 of Guidance Note 12 *Significant Changes to Activities* regarding the in-principle advice an entity may seek about the potential application of Listing Rules 11.1 or 11.2 to a transaction potentially involving a significant change in the nature or scale of its activities.



helpful in working out whether or not a waiver is required. The latter can be helpful in managing any timing issues around the granting and publication of waiver decisions.

Any in-principle advice given by ASX will be expressed as a non-binding statement of ASX's intent based on the facts known at the time. It may be given subject to conditions and will usually be expressed to apply for a limited time only (typically 3 months).<sup>21</sup> It is treated by ASX as a confidential communication and is not released by ASX to the market.

An application by a listed entity for in-principle advice should be addressed to ASX Listings Compliance at the entity's home branch and clearly marked "Not for public release".<sup>22</sup>

ASX does not charge a fixed fee for providing in-principle advice to a listed entity.<sup>23</sup>

### 14. The form and contents of an application for in-principle advice

There is a prescribed form for use by an entity that is considering applying for admission or re-admission to the official list and that wishes to receive in-principle advice on its suitability for admission or re-admission under Listing Rule 1.1 condition 1 and Listing Rule 1.19 ahead of lodging its application for admission or re-admission. An editable version of that form can be downloaded from the ASX website at:

<https://www2.asx.com.au/about/regulation/asx-compliance/asx-compliance-downloads>.<sup>24</sup>

The entity must provide all of the applicable information referred to in that form in sufficient detail to enable ASX to form a view on the suitability of the entity for admission to the official list. ASX may reject or defer consideration of an application for in-principle advice that does not include all of the required information in sufficient detail.

There is no prescribed form for other types of application for in-principle advice. A letter from the entity or its advisers detailing the advice sought and providing the information set out below will suffice.

Where the entity is seeking in-principle advice on the application of a Listing Rule to a particular situation, the application should include:

- the specific Listing Rule or Rules in relation to which the advice is sought;<sup>25</sup>
- an explanation of the transaction (including diagrams where appropriate) or other event or circumstance about which the advice is sought;
- if the advice relates to an issue of securities, the entity's capital structure before and after the issue of securities; and
- if the advice relates to a transaction involving a related party<sup>26</sup> of, or another party in a position of influence<sup>27</sup> in relation to, the entity, full details of the relationship between that party and the entity.

<sup>21</sup> If the advice expires, the entity will need to apply for fresh advice or for confirmation from ASX that it can regard the advice as having been extended by ASX for a further (usually 3 month) period.

<sup>22</sup> Listing Rule 15.6.

<sup>23</sup> Although if the application raises novel or complex issues which, in ASX's estimation, will require, or has required, more than 10 hours' time by a Listings Compliance adviser or advisers to review, ASX may charge a time-based fee for each hour that ASX estimates that Listings Compliance advisers will be, or were, involved in reviewing the application in excess of 10 hours. ASX may charge this fee before or after undertaking the work involved. See Guidance Note 15A *Schedule of ASX Listings Fees*.

<sup>24</sup> A link to the application can be found under the heading "Applications for listing". It is called "*Application for In-Principle Advice (ASX Listing Rules 1.1 Condition 1 and 1.19)*".

<sup>25</sup> ASX will not accept an application for in-principle advice to be given in respect of "any applicable" Listing Rules or the Listing Rules generally.

<sup>26</sup> As defined in Listing Rule 19.12.

<sup>27</sup> That is, a party referred to in Listing Rules 10.1, 10.11 or 10.14.



Where the entity is seeking in-principle advice on ASX's preparedness to grant a waiver of a Listing Rule, the application should include the same information as mentioned in section 6 above required in an application for a waiver of that rule.

In each case, this information should be provided in sufficient detail to enable ASX to fully assess the matter and to be satisfied that giving the advice requested is consistent with the underlying policy of the Listing Rule or Rules in question. ASX may reject or defer consideration of an application for in-principle advice that does not include this information in sufficient detail.

It should be noted that if ASX indicates in its in-principle advice that it is prepared to grant a particular waiver, the applicant will need to lodge a formal written request for the waiver in due course that references the in-principle advice received from ASX and confirms that the facts outlined in the request for the in-principle advice have not changed.

### Annexure: Standard waivers

The following waivers are considered “standard” and will generally be granted by ASX upon request unless there is something unusual in the circumstances:

1. In the case of 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 CHESSE Depository Interests (CDIs) to facilitate the holding and transfer of its ASX-quoted securities, a waiver from Listing Rule 1.1 condition 6 and Listing Rule 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.
2. In the case of a US entity subject to US SEC reporting obligations, a waiver from Listing Rules 4.2A.3, 4.3A, 4.7B and 4.7C to allow the entity to lodge with ASX:
  - if the entity is subject to quarterly reporting obligations under Listing Rules 4.7B and 4.7C:
    - in lieu of an Appendix 4C and a quarterly activity report for the first, second and third quarters of its financial year:
      - a copy of the Forms 10-Q the entity has filed with the SEC for those quarters; and
      - for each of those quarters, if there is any information that ought to have been disclosed in the entity’s quarterly activity report for that quarter under Listing Rule 4.7C that is not included in the entity’s Form 10-Q for that quarter, a supplement to the Form 10-Q for that quarter that discloses the information; and
    - in lieu of an Appendix 4C and a quarterly activity report for the fourth quarter of its financial year:
      - a copy of the Form 10-K the entity has filed with the SEC for that financial year; and
      - if there is any information that ought to have been disclosed in the entity’s quarterly activity report for the fourth quarter under Listing Rule 4.7C that is not included in the entity’s Form 10-K, a supplement to the Form 10-K that discloses the information;
  - in lieu of an Appendix 4D for the first half of its financial year:
    - a copy of the Forms 10-Q the entity has filed with the SEC for the first and second quarters of that financial year; and
    - in the case of the entity’s Form 10-Q for the second quarter, a cover sheet for the Form 10-Q headed “Results for announcement to the market” with the key information set out in section 2 of Appendix 4D; and
  - in lieu of an Appendix 4E for its full financial year:
    - a copy of the Form 10-K the entity has filed with the SEC for that financial year; and
    - a cover sheet for the Form 10-K headed “Results for announcement to the market” with the key information set out in section 2 of Appendix 4E,

in each case, on condition that the entity:

  - gives its Forms 10-Q for the first and third quarters of its financial year to ASX for release to the market immediately after it has been filed with the SEC and, in any event, by no later than the date on which it is due to be given to the SEC under US law;

- it gives its Forms 10-Q and the cover sheet referred to above for the first half of its financial year to ASX for release to the market by the earliest of: (a) the date it is filed with the SEC; (b) the date it is due to be given to the SEC under US law; and (c) the date that its Appendix 4D and half-year report are due to be lodged with ASX under Listing Rule 4.2A;
- it gives its Form 10-K and the cover sheet referred to above for its full financial year to ASX for release to the market by the earliest of: (a) the date it is filed with the SEC; (b) the date it is due to be given to the SEC under US law; and (c) the date that its Appendix 4E and the accounts on which it is based are due to be lodged with ASX under Listing Rule 4.3A;
- acknowledges in writing to ASX that if it fails to give ASX its quarterly Forms 10-Q and annual Form 10-K along with any cover sheet or supplement required under this waiver by the due date above, ASX will suspend its securities from quotation under Listing Rule 17.5 on the trading day after the date on which the documents were due;
- gives to ASX for release to the market any SEC Form 8-K it files with the SEC immediately after it has been filed with the SEC;
- makes an announcement to the market about the granting of this waiver and its effect;
- includes on its website information about this waiver and its effect on the timeframes within which it must lodge its quarterly Forms 10-Q and annual Form 10-K with ASX compared to the time frames that, but for this waiver, it would have to lodge with ASX an Appendix 4C; and
- notifies ASX immediately if it ceases to be subject to an obligation to file Forms 10-K and 10-Q with the SEC under US law.

This waiver will cease to apply if the entity ceases to be subject to an obligation to file Forms 10-K and 10-Q with the SEC under US law.

3. A waiver from Listing Rule 6.23.2 to permit an entity to cancel unquoted options or performance rights for consideration without the approval of the holders of ordinary securities, where the cancellation is pursuant to:
  - a takeover bid; or
  - a merger effected by way of a scheme of arrangement,that in either case is required to comply with the Corporations Act;
4. A waiver from Listing Rule 6.23.4 to permit an entity to amend the terms of options without the approval of the holders of ordinary securities, where the amendment is solely to enable the entity to satisfy its obligation to issue shares upon the exercise of the options through an employee share trust arrangement under which the trustee may either subscribe for new shares, purchase existing shares on-market and/or allocate unallocated shares previously acquired by the trustee.
5. A waiver<sup>28</sup> from Listing Rule 7.1 to permit an entity conducting a capital raising which will consist of a placement of new ordinary securities (the "Placement"), and an accelerated pro rata entitlement offer of new ordinary securities (the "Entitlement Offer"), to the extent necessary to permit the entity to calculate the number of ordinary shares which it may issue without shareholder approval pursuant to the Placement on the basis that variable "A" of the formula in Listing Rule 7.1 is deemed to include the number of ordinary securities in the entity that may be issued under the underwritten component of the Entitlement Offer, subject to the following conditions:

<sup>28</sup> Often referred to as a "supersize waiver".

- the ordinary securities issued under the Placement are to be included in variable "C" in the formula in Listing Rule 7.1, until their issue has been ratified by shareholders under Listing Rule 7.4 or 12 months has passed since their issue; and
  - in the event that the full number of securities offered under the underwritten component of the Entitlement Offer is not issued, and the number of shares represented by the Placement thereby exceeds 15% of the actual number of the entity's securities following completion of the Entitlement Offer, the entity's 15% placement capacity under Listing Rule 7.1 following completion of the Entitlement Offer is to be reduced by that number of securities issued under the Placement that exceeded the entity's 15% capacity under Listing Rule 7.1 at the time of the Placement.
6. Where an entity is seeking approval under Listing Rule 7.1 to an issue of securities under an SPP to which Exception 5 of Listing Rule 7.2 would otherwise have applied but for the fact that the number of securities to be issued under the SPP is greater than 30% of the number of fully paid ordinary securities already on issue or because the issue price of the securities is less than 80% of the average market price for securities in that class, a waiver from Listing Rule 7.3.9 to permit a resolution in a notice of meeting approving the issue of securities under the SPP not to include a voting exclusion statement that excludes votes in favour of the resolution by any person who may participate in the SPP or any associate of such a person, provided:
- the SPP is not underwritten; or
  - if the SPP is underwritten, the entity excludes any votes cast on the resolution by any proposed underwriter or sub-underwriter of the SPP and their associates,
- and, where the resolution is passed by the holders of ordinary securities, a concurrent waiver from Listing Rule 10.11 to permit directors and their associates to participate in the SPP on the same terms as other shareholders without the approval of the holders of ordinary securities under that rule.<sup>29</sup>
7. A waiver from Listing Rule 7.16 to permit an entity to issue options where the total number of options on issue will not be more than 105% of the total number of underlying securities on issue.
8. A waiver from Listing Rule 7.25 to allow an entity to reorganise its capital pursuant to an equal reduction of capital that has been approved by the holders of ordinary securities and that will be completed in accordance with the provisions of the Corporations Act, even if it is likely to reduce the trading price of the entity's main class of securities to an amount less than 20 cents.
9. Where:
- ASX has exercised its power under Listing Rule 11.1.3 to require an entity to meet the requirements in chapters 1 and 2 in relation to a particular transaction; and
  - the entity is proposing an issue of securities as part of, or in connection with, that transaction that requires the approval of the holders of ordinary securities under Listing Rule 10.11,
- a waiver from Listing Rule 10.13.5 to permit the notice of meeting with the resolution to approve the issue of securities to state that the securities will be issued at the same time as other securities to be issued under a prospectus or PDS that the entity has issued or is proposing to issue as part of, or in connection with, that transaction, rather than within one month after the date of the meeting.
10. Where:
- an entity's securities are suspended from official quotation following the appointment of an administrator to the entity's business, property and affairs; and

<sup>29</sup> This concurrent waiver effectively treats the offer under the SPP on the same basis as an offer falling within Exception 4 of Listing Rule 10.12.

- creditors of the entity have agreed to the restructure and recapitalisation of the entity pursuant to a deed of company arrangement and the entity is proposing an issue of securities as part of, or in connection with, that transaction that requires the approval of the holders of ordinary securities under Listing Rule 10.11,

a waiver from Listing Rule 10.13.5 to permit the notice of meeting with the resolution to approve the issue of securities to state that the securities will be issued at the same time as other securities to be issued under a prospectus or PDS that the entity has issued or is proposing to issue as part of, or in connection with, that transaction, rather than within one month after the date of the meeting.

### 11. Where:

- ASX has exercised its power under Listing Rule 11.1.3 to require an entity to meet the requirements in chapters 1 and 2 in relation to a particular transaction;
- the entity is proposing an issue of securities as part of, or in connection with, that transaction that requires the approval of the holders of ordinary securities under:
  - Listing Rule 7.1 and the notice of meeting includes the statement required by Listing Rule 7.3.4 that the securities will be issued no later than three months after the date of the meeting; or
  - Listing Rule 10.11 and the notice of meeting includes the statement required by Listing Rule 10.13.5 that the securities will be issued not more than one month after the date of the meeting; and
- the entity's securities are suspended from quotation under Listing Rule 11.3 pending compliance with chapters 1 and 2,

a waiver from Listing Rule 14.7 to permit the securities to be issued outside the three month and one month period respectively, provided that:

- the securities are issued on the same terms and conditions as approved by the holders of ordinary securities and before the suspension is lifted;<sup>30</sup> and
- the circumstances of the entity have not changed materially since the holders of ordinary securities approved the issue of securities.

### 12. Where:

- an entity's securities are suspended from official quotation following the appointment of an administrator to the entity's business, property and affairs;
- creditors of the entity have agreed to the restructure and recapitalisation of the entity pursuant to a deed of company arrangement and the entity is proposing an issue of securities as part of, or in connection with, that proposal that requires the approval of the holders of ordinary securities under:
  - Listing Rule 7.1 and the notice of meeting includes the statement required by Listing Rule 7.3.4 that the securities will be issued no later than three months after the date of the meeting; or
  - Listing Rule 10.11 and the notice of meeting includes the statement required by Listing Rule 10.13.5 that the securities will be issued not more than one month after the date of the meeting; and

<sup>30</sup> Any issue of security that is proposed as part of, or in connection with, a transaction to which ASX has determined Listing Rule 11.1.3 applies, must not be completed until the entity has satisfied all of the requirements of Chapters 1 and 2 of the Listing Rules and any other requirements imposed by ASX for re-instatement of the entity's securities to quotation.

- the entity's securities remain suspended from quotation pending compliance with Listing Rules 12.1 and 12.2,

a waiver from Listing Rule 14.7 to permit the securities to be issued outside the three month and one month period respectively, provided that:

- the securities are issued on the same terms and conditions as approved by the holders of ordinary securities and before the suspension is lifted; and
- the circumstances of the entity have not changed materially since the holders of ordinary securities approved the issue of securities.