Updating ASX's Admission Requirements for Listed Entities

Final Listing Rule Amendments

RESPONSE TO CONSULTATION NOVEMBER 2016

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Introduction

ASX plays a central role in the Australian economy by providing listed companies with access to capital to fund business expansion and innovation, and by providing investors with the confidence to pursue investment opportunities for wealth creation. Two key services provided by ASX that are central to a well-functioning market are the setting and enforcing of appropriate listing standards, and supporting an efficient price discovery process.

Maintaining appropriate listing admission requirements and a robust qualification process for listing is integral to the trust and confidence that investors have in ASX's market. That trust and confidence helps to reduce the risk premium that investors require to invest in ASX listed entities, and facilitates more efficient price discovery and access to capital. The disclosure regime on ASX's market is another key mechanism in supporting investor trust and confidence by providing the information required to make informed investment decisions.

ASX has reviewed its requirements for admission to the ASX official list. Some of these requirements have not been reviewed for a number of years. At the same time, global and domestic equity markets continue to evolve, and market operators in other important financial centres are also considering their approach to admission.

ASX is making changes to a number of its listing admission requirements to ensure that the ASX market continues to be a market of quality and integrity, and remains internationally competitive given the continuing trend in cross-border international listings. ASX has also sought to ensure that its listing admission requirements continue to support and provide a pathway for early stage resources, and technology and innovation entities to list and access capital.

This paper explains the changes ASX is making to its listing admission requirements and related guidance. This follows a comprehensive public consultation process, which was commenced on 12 May 2016 with the release of the consultation paper '[Updating ASX's Admission Requirements for Listed Entities]'. The consultation paper set out a number of proposed changes to the ASX listing admission requirements.

Reflecting the important role that ASX's equities market plays, there was a strong level of interest in the proposed changes to the admission requirements from a wide range of stakeholders, including investor, listed company, broker, and corporate advisory groups. There has been very constructive engagement from these stakeholder groups in the consultation, evidenced by the receipt of a large number of high quality written submissions and the willingness of stakeholders to participate in subsequent consultation meetings to discuss particular matters raised in their submissions.

A number of consultation meetings with stakeholders were held in Sydney, Melbourne and Perth over the last 5 months. These meetings were largely focussed on the potential impact of increasing the net tangible assets (NTA) test on junior mining exploration entities, the new requirements for disclosure of audited historical financial information, and the development of a new regulatory framework setting out the minimum conditions that must be met in order for a listed entity not to be suspended immediately upon the announcement of a backdoor listing transaction.

ASX received 56 written submissions prepared by organisations and individuals in response to the consultation paper. ASX also received in excess of 2,000 'form' letters and emails from retail investors as part of a sponsored online campaign in relation to the proposed changes to the minimum spread requirements for listing. The feedback received in submissions and the consultation meetings has helped to

shape the development of a final package of listings admission rule amendments and related guidance for regulatory clearance.

The key listings admission rule changes are:

- For profit test entities, an increase in the requirement for consolidated profits for the 12 months prior to admission **from $400,000 to $500,000**. This is consistent with the consultation proposal.
- An increase in the net tangible assets test (NTA) **from $3 million to $4 million**. A proposal to increase it to $5 million was subject to consultation.
- An increase in the market capitalisation test **from $10 million to $15 million**. A proposal to increase it to $20 million was subject to consultation.
- A new **20% minimum free float** requirement. This is consistent with the consultation proposal.
- A single tier spread test requiring **at least 300 security holders each holding at least $2,000 of securities**. ASX consulted on a proposal to change the existing spread test to 200 security holders if the entity has a free float of less than $50 million, or 100 security holders if the entity has a free float of $50 million or more, with each of these security holders holding a parcel of securities with a value of at least $5,000.
- New audited accounts requirements for assets test entities requiring the disclosure to the market of **2 full financial years of audited accounts** for the entity seeking admission and any significant entity or business that it has acquired in the 12 months prior to applying for admission or that it proposes to acquire in connection with its listing. ASX consulted on a proposal to require entities seeking admission under the assets test to produce audited accounts for the last 3 full financial years for the entity seeking admission and any entity or business to be acquired by the entity at or ahead of listing.
- A standardised **$1.5 million working capital** requirement for all entities admitted under the assets test. This is consistent with the consultation proposal.

Further detail on the revised package of listing admission rule amendments and related guidance that incorporate the changes required to implement ASX's response to consultation feedback is included in the following sections of this paper.

Associated documents

The amendments to the ASX Listing Rules and Guidance Notes 1, 4, 12, 29 and 30 discussed in this paper are available on the public consultation page of the ASX website in mark-up. There are also consequential amendments to a number of other Guidance Notes available on the public consultation page of the ASX website.

Implementation date

The ASX Listing Rules amendments discussed in this paper come into effect on Monday, 19 December 2016, subject to the normal regulatory clearance process. Prospective listing applicants should note that ASX is already applying the 20% minimum free float requirement under its general power to impose conditions on listing.

Applications for listing received prior to 19 December 2016 will be assessed against the admission requirements in the current listing rules. Applicants lodging their application on or after that date will be assessed against the admission requirements in the new listing rules.

Prospective listing applicants and other market users are also advised to familiarise themselves with the Guidance Note amendments discussed in this paper. Other than guidance that specifically relates to the listing rules scheduled to take effect on 19 December, this guidance should be taken as explaining ASX's current approach to the matters described. This includes the additional guidance about ASX's admission discretion, about what may constitute an unacceptable structure and operations for listing, and about early engagement with ASX ahead of a listing application.

The policy changes set out in Guidance Note 12 relating to the new arrangements for the announcement of backdoor listing transactions and the minimum conditions that must be met in order for an entity's securities to resume trading following such an announcement, will come into effect immediately upon the publication of this paper.

Increase in profit test requirements

Listing Rule 1.2 will be amended to increase the consolidated profit requirement under the profit test for the 12 months prior to admission from $400,000 to $500,000.

Reflecting ASX's view that the profit test overall remains appropriate for the Australian market, the other requirements in the profit test will remain unchanged:

- the entity must be a going concern and have conducted the same main business activity during the last 3 full financial years prior to admission; and
- the entity must have aggregated profit of at least $1 million from continuing operations for the last 3 full financial years prior to admission.

The consolidated profit requirement for the 12 months prior to admission has not changed since 1994. The increase in the requirement is aimed at ensuring an appropriate minimum standard as to profitability in the year prior to listing is maintained over time. The primary purpose of the profit test is to demonstrate that the entity is a going concern, has a track record of profitability and has a sustainable business.

This change was supported by a wide range of stakeholders in their written submissions in response to the consultation paper. One respondent indicated that the status quo should be maintained and two other respondents expressed support for an increase in the requirement to $700,000.

ASX has formed the view that increasing the threshold to $500,000 is appropriate at this time given the strong support the proposal received from the majority of stakeholders.

Analysis of listings data for calendar years 2014 and 2015 indicates that only one entity[1] admitted under the profit test had a profit of less than $500,000 in the 12 months prior to listing.

[1] That is, 0.4% of the 273 front and back door listings over that period.

Increase in NTA test requirements

Listing Rule 1.3 will be amended to increase the minimum NTA requirement from $3 million to $4 million for all entities applying for admission under the NTA limb of the assets test.

This financial threshold was put in place in 2012. The primary purpose of the NTA test is to provide investors with greater confidence that the entity will have sufficient resources to carry on its business for a reasonable period of time.

ASX consulted on a proposal to increase the minimum NTA requirement to $5 million. The adoption of a requirement for a minimum NTA of $4 million addresses the feedback received in consultation and is consistent with ASX's policy objectives of maintaining appropriate listing standards.

While a number of respondents to the consultation supported the consultation proposal, a wide range of stakeholders were not supportive of such a significant increase on the basis that it could be prohibitive for many quality applicants seeking to list on ASX. Particular concern was expressed in relation to the potential impact of the consultation proposal on the ability of mining exploration entities and early stage technology and innovation entities to list and access capital, given the lack of alternative funding available for these types of entities in the Australian market.

A large number of respondents also noted that a minimum NTA requirement of $5 million was not necessarily appropriate for mining exploration entities. This was on the basis that many of these entities will generally not require the cash levels on listing necessary to reach an NTA of $5 million. It was suggested that significantly increasing the NTA requirement for these entities could have the unintended consequences of promoting inefficient capital management practices and could lead to the failure of fundraising activities. Respondents also suggested that such a significant increase in the requirement would be inconsistent with many mining exploration entities' funding strategies in the early exploration phase of their life cycles where they seek to raise only enough capital to meet their initial drilling targets. Thereafter, they are able to raise further funding on more favourable terms to progress to the next stage of exploration and development.

A number of respondents to the consultation put forward a proposal for entities with a 'classified asset' as their main undertaking being carved-out from the proposed requirement for a $5 million minimum NTA, with the definition of a 'classified asset' being:

(a) an interest in a mining exploration area or an oil and gas exploration or similar tenement or interest; or

(b) an interest in intangible property that is substantially speculative or unproven, or has not been profitably exploited for at least 3 years, and which entitles the entity to develop, manufacture, market or distribute the property; or

(c) an interest in an asset which cannot be readily valued.

There were a couple of variations to the proposal put forward, with some respondents suggesting that any entity with a classified asset as its main undertaking should be subject to a $3 million minimum NTA requirement. Other respondents suggested that entities satisfying paragraph (a) of the definition (which would capture mining and oil and gas exploration entities) should be subject to a $3 million minimum NTA requirement, while entities satisfying paragraphs (b) and (c) of the definition (which would largely capture early stage technology and innovation entities) should be subject to a $4 million minimum NTA requirement, with all other entities being subject to a $5 million NTA requirement.

In assessing the feedback received, ASX gave serious consideration to the introduction of a differential NTA requirement for mining and oil and gas exploration entities. On balance, ASX considers that the 'classified asset' proposal that was put forward would unnecessarily complicate the administration of the listings admission requirements, and that there is merit in maintaining a standardised NTA requirement applicable to all industries and sectors. A single NTA requirement is not only simpler, it reflects ASX's approach of providing a listing market that is equally supportive of entities in the early stages of their business lifecycle across all industries and sectors.

While the case has been made for many mining exploration entities not necessarily needing the cash levels that would result from an NTA requirement of $5 million, many of the arguments put forward by respondents to justify a lower NTA requirement for these entities could equally be made for other early stage technology and innovation entities.

ASX has formed the view that a standardised $4 million NTA requirement is appropriate and will reduce the impact that a higher requirement could have on the ability of early stage mining exploration, and technology and innovation entities to list and access capital.

Analysis of listings data for calendar years 2014 and 2015 indicates that 14 entities[2] (5 resources explorers) admitted under the NTA test had an NTA of less than $4 million. This is not to say that all 14 of these entities would not have been able to list had a $4 million minimum NTA requirement been in place. Some of the entities may have had sufficient investor support to adjust their capital raising to meet the increased requirement.

ASX considers that an increase in the NTA requirement to $4 million will provide a less disruptive transition to a higher financial threshold and will assist in maintaining appropriate minimum standards over time as to the minimum size to be listed on ASX's market. It will also provide investors with greater confidence that the entity will have sufficient resources to carry on its business for a reasonable period of time.

Increase in market capitalisation test requirements

Listing Rule 1.3 will be amended to increase the minimum market capitalisation requirement from $10 million to $15 million for all entities applying for admission under the market capitalisation limb of the assets test.

This financial threshold has not changed since 1999. The primary purpose of the market capitalisation test is to provide investors with greater confidence that the entity will have sufficient resources on listing to carry on its business for a reasonable period of time.

ASX consulted on a proposal to increase the minimum market capitalisation requirement to $20 million. The adoption of a requirement for a minimum market capitalisation of $15 million addresses the feedback received in consultation and is consistent with ASX's policy objective of maintaining appropriate listing standards.

While the consultation proposal was supported by a range of stakeholders, a number of respondents to the consultation expressed the view that an increase to $15 million would be a more proportionate and appropriate increase at this time. These submissions considered that a doubling in the requirement in one step could be too much for the market to support.

[2] That is, 5% of the 273 front and back door listings over that period.

There were some respondents who did not support changing the requirement at all on the basis that it could have an adverse impact on early stage technology and innovation entities being able to list and access capital.

ASX has formed the view that a $15 million minimum market capitalisation requirement is appropriate and will reduce the impact that a higher requirement could have on the ability of early stage mining exploration and technology and innovation entities from listing and accessing capital.

Analysis of listings data for calendar years 2014 and 2015 indicates that 9 entities[3] (3 resources explorers) admitted under the market capitalisation test had a market capitalisation of less than $15 million. This is not to say that all 9 of these entities would not have been able to list had a $15 million minimum market capitalisation requirement been in place. Some of these entities may have had sufficient investor support to adjust their capital raising to meet the increased requirement.

Increasing the minimum market capitalisation requirement to $15 million provides a less disruptive transition to a higher financial threshold. At the same time, it will assist in maintaining an appropriate standard over time as to the minimum size to be listed on ASX. Increasing the requirement will also provide investors with greater confidence that the entity will have sufficient resources to carry on its business for a reasonable period of time.

New free float requirements

Listing Rule 1.1 will be amended to introduce a new requirement for an entity to have a free float of at least 20% at the time of admission.

Unlike many major markets around the world, ASX has not previously had an overarching rules-based minimum free float requirement applicable to the whole market. A rules-based 20% minimum free float requirement will increase the potential for secondary market liquidity in the entity's securities.

The listing rules will also be amended to include the following definitions:

- free float – the percentage of the entity's main class of securities that are not restricted securities or subject to voluntary escrow, and are held by non-affiliated security holders; and
- non-affiliated security holder – a security holder who is not a related party of the entity, an associate of a related party of the entity, or a person whose relationship to the entity or to a related party of the entity or their associates is such that, in ASX's opinion, they should be treated as affiliated with the entity.

The proposal to implement a rules-based 20% minimum free float requirement at the time of admission was broadly supported by a wide range of stakeholders in their written submissions to the consultation paper. One respondent suggested a higher minimum free float requirement of 25%. However, a number of other respondents did not support the proposal on the basis that it was too large an increase in the requirement (from the current 10% guidance-based approach), especially given the proposal for securities subject to voluntary escrow to be excluded from the free float calculation. There was some concern expressed in relation to the potential for an inflexible rules-based requirement of 20% to result in some early stage technology and innovation entities not being able to list and access capital. In this context, it was suggested that a tiered approach with a lower minimum free float requirement applying to larger capitalised entities

[3] That is, 3% of the 273 front and back door listings over that period.

and a higher minimum free float requirement applying to smaller capitalised entities could be adopted. It was also suggested that ASX take a flexible approach and exercise its discretion to list companies with a lower free float where they are otherwise good candidates for listing and where the issuer explained its plans to increase its free float.

There were mixed views among respondents to the consultation in relation to the exclusion of securities subject to voluntary escrow from the free float calculation. Some respondents were supportive of the exclusion of these securities from the free float calculation. Others were concerned that their exclusion could make it difficult for entities to satisfy a 20% free float requirement and that it could have the unintended consequence of creating a disincentive to use voluntary escrow arrangements.

Analysis of listings data for calendar years 2014 and 2015 indicates that 9 entities[4] were listed with a free float of less than 20%.[5] This is not to say that all 9 of these entities would not have been able to list had a 20% minimum free float requirement been in place. Some of these entities may have restructured their offering to meet the increased requirement.

In assessing the feedback received, ASX has formed the view that introducing a 20% minimum free float requirement is appropriate given the strong support the proposal received from the majority of stakeholders. ASX considers that a 20% minimum free float requirement strikes a good balance between promoting potential liquidity in the secondary market and providing for more efficient price discovery and, at the same time, not acting as a barrier to the admission of early stage innovation and technology entities. Peer exchanges generally have a rules-based minimum free float requirement in the range of 15 - 25%, and ASX's decision is broadly in line with other comparable markets.

ASX considers that its proposal to exclude securities subject to voluntary escrow from the free float calculation is appropriate given securities subject to these arrangements are not freely tradeable. Notwithstanding this requirement, ASX is of the view that commercial imperatives and the market will continue to dictate the use of voluntary escrow arrangements.

Simplified minimum spread requirements

Listing Rule 1.1 will be amended to put in place a spread test to require a minimum of 300 non-affiliated security holders each holding a parcel of non-restricted securities with a value of at least $2,000.

ASX consulted on a proposal to change the minimum spread test from:

- 400 security holders if the entity has a free float of less than 25%, 350 security holders if the entity has a free float of between 25% and 50%, or 300 security holders if the entity has a free float of more than 50%, with each of these security holders holding a parcel of securities with a value of at least $2,000

to:

- 200 security holders if the entity has a free float of less than $50 million, or 100 security holders if the entity has a free float of $50 million or more, with each of these security holders holding a parcel of securities with a value of at least $5,000.

[4] That is, 3% of the 273 front and back door listings over that period.
[5] This analysis does not take into account the impact of the new requirement that excludes securities subject to voluntary escrow.

The current minimum spread requirements were put in place when ASX did not have a minimum free float requirement. At that time, the spread requirements were aimed at serving two purposes – to demonstrate a sufficient breadth of investor support for the entity's listing and promoting liquidity in the entity's securities following listing.

ASX considers that the new free float requirement will be potentially more effective in providing liquidity following listing than the current spread test. With the introduction of the minimum free float requirement, the primary purpose of the spread test will now be to demonstrate sufficient investor interest to warrant the entity's listing.

The new spread test will now only count non-affiliated security holders, so will exclude securities issued to related parties, affiliates of related parties, and any person whose relationship to the entity or to a related party of the entity or their associates is such that, in ASX's opinion, they should be treated as affiliated with the entity. The new test will also exclude holdings of restricted securities and securities that are subject to voluntary escrow. These exclusions are aimed at ensuring that the spread test is a robust and genuine test of investor interest. The effect of these changes is that a security holder spread of 300 under the new rules will be more demanding than an equivalent requirement under the current rules.

Moving to a single tier spread test requiring at least 300 security holders each holding at least $2,000 of securities addresses a core element of the feedback received in consultation and simplifies the admission requirements. ASX considers it strikes an appropriate balance between demonstrating a minimum level of investor interest to justify listing on a public market, and not becoming a barrier to listing for entities which may otherwise be good candidates for listing.

Some stakeholders supported the proposed change to the spread requirements on the basis that the 20% minimum free float requirement would be more effective in supporting liquidity in the secondary market. However, a wide range of stakeholders expressed concern about the potential unintended consequence of diminishing retail investor access to IPOs. They were particularly concerned about the impact on retail investors of the proposal to increase the value of the minimum parcel size from $2,000 to $5,000.

Some respondents supported a reduction in the minimum number of security holders, but did not support the proposed increase in the value of the parcel size. These respondents commented that where investors are investing in smaller, early stage and riskier entities, the increased value of the minimum parcel size would require investors to take on greater risk, and would potentially limit retail investors' ability to diversify their portfolio of IPO investments. A number of submissions commented that this would likely make it more difficult for issuers reliant on retail investors to meet the spread test and raise the capital they require to list. A number of respondents were also concerned that the reduction in the minimum number of shareholders required to satisfy the spread test would result in less distribution and a lower allocation of securities under an IPO to retail investors.

In addition, ASX received a large number of 'form' letters and emails from retail investors during the consultation in relation to the proposed changes to the minimum spread requirements, commenting that the changes had the potential to reduce the allocation of securities to retail investors in IPOs. As part of this campaign, it was recommended that ASX adopt listing rules requiring a minimum spread of 400 security holders, and requiring companies undertaking an IPO to reserve 25-40% of securities for retail investors. This was said to bring ASX's listing rules in line with those in place in Hong Kong and Singapore. ASX considered these recommendations and concluded that they did not accurately reflect the regulatory arrangements and market structures in Hong Kong and Singapore.

The core recommendation put forward in these letters and emails was that a particular percentage of securities in an IPO should be reserved for retail investors. This would be a significant change to the manner in which Australian capital markets currently operate, and is outside the scope of ASX's spread requirements for admission that were subject to consultation. Such a significant change to the capital raising regime and the way in which bookbuilds are currently managed in the Australian market would have broad implications for market infrastructure, intermediaries and other stakeholders. The market impacts of such a change have not been examined and are not well understood, and would likely tend to promote some business interests over other stakeholders.

The revised changes to the spread test requiring a minimum of 300 unaffiliated security holders holding a minimum parcel size of at least $2,000 responds to the feedback received in written submissions to the consultation regarding the potential unintended consequence that a significant reduction in the minimum number of security holders or an increase in the value of the minimum parcel size required under the spread test could have on retail investor access to IPOs. It also responds to feedback from the broking community regarding the potential barrier to listing and economic inefficiency created by too high a requirement for a minimum number of security holders.

In this regard, setting the requirement for the minimum number of security holders too high could have significant cost and flow-on consequences. For instance, entities that may have strong institutional investor support and limited retail support either will not be able to list and access capital through the public market or they will need to take active steps to 'manufacture' the necessary security holder spread to meet the requirements. This may be the case where there is a complex business model that is not readily understood by retail investors or where the entity is developing an emerging technology. ASX does not consider that the minimum spread requirements should inhibit these types of entities from listing.

It should also be noted that the spread test sets minimum requirements for the number of security holders and the value of the parcel size to satisfy the listings admission requirements. In ASX's experience, those minimums are frequently exceeded. Beyond meeting the minimum spread requirements, issuers and their advisers have the flexibility to accept whatever number of subscribers to their IPO that will meet the issuer's capital raising needs and corporate objectives.

The proposed change to the spread test is also broadly aligned with other major markets, including the Hong Kong Exchange (HKEx) and the Singapore Exchange (SGX). The minimum number of public security holders required to list on HKEx is 300 for its main board and only 100 security holders for its second board (GEM). The minimum number of public security holders required to list on SGX is 500 for its main board and only 200 security holders for its second board (Catalist). ASX operates one main board covering a diverse range of listed entities in the Australian market. It lists many companies on its board that could only list on GEM in Hong Kong or Catalist in Singapore. The main board in the Canadian market also requires a minimum of 300 security holders for admission.

Standardised working capital requirements

Listing Rule 1.3.3 will be amended to standardise the $1.5 million working capital requirement for all entities admitted under the assets test, and to require that this amount must be available after allowing for the first full financial year's budgeted administration costs and the cost of acquiring any assets referred to in the prospectus, PDS or information memorandum (to the extent that those costs will be met out of working capital).

Currently, this latter requirement only applies to mining and oil and gas exploration entities.

This change was supported by a wide range of stakeholders in their written submissions in response to the consultation paper. One respondent also suggested that all listed entities should be required to maintain a minimum of $1.5 million in working capital at all times. Two respondents did not support the proposal on the basis that it does not reflect the different circumstances and the different working capital needs of different entities.

In assessing the feedback received, ASX has formed the view that imposing a standardised minimum $1.5 million working capital requirement at the time of admission across all entities admitted under the assets test is appropriate given the strong support the proposal received from the majority of stakeholders. While this change represents a tightening of the minimum requirement for all entities that are not mining, and oil and gas exploration entities, all entities will continue to be required to confirm that they have adequate working capital to carry out their stated objectives (and make a statement to that effect in their prospectus or PDS).

The rationale for standardising and extending the current $1.5 million minimum working capital requirement to all entities admitted under the assets test is to provide greater certainty to investors in relation to the minimum level of working capital that an entity will have available at the time of listing. It is also intended to increase the likelihood that the listed entity will have sufficient resources to carry on its business without coming back to the market to raise funds for working capital for a reasonable period after listing.

ASX considers that the suggestion raised in consultation for the working capital requirement to be imposed as an ongoing requirement, could be very disruptive to a number of listed entities in the early stages of their business lifecycle. It could also have the unintended consequence of promoting inefficient capital management.

New requirements for audited accounts for admission under the assets test

Listing Rule 1.3.5 will be amended to introduce a new requirement for entities seeking admission under the assets test to produce audited accounts for the last 2 full financial years prior to admission. Where an entity is more than 6 months and 75 days into the current financial year, it will also be required to produce audited or reviewed accounts for the last half year.

Listing Rule 1.3.5 will also include a new requirement for entities seeking admission under the assets test that have in the 12 months prior to applying for admission acquired, or are proposing in connection with their listing to acquire, another entity or business that is significant in the context of the entity, to produce 2 full financial years of audited accounts for that significant entity or business. Where the significant entity or business is more than 6 months and 75 days into the current financial year, the entity seeking admission will be required to produce audited or reviewed accounts for the last half year for that significant entity or business.

Guidance Note 1 will be updated to provide guidance on the meaning of ‘significant’ for these purposes. An entity or business will generally be considered significant if at the time of listing it will account for 25% or more of any of the applicant’s: consolidated total assets; consolidated total equity interests; consolidated annual revenue, or in the case of a mining exploration entity, oil and gas exploration entity or other entity that is not earning material revenue from operations, consolidated annual expenditure; consolidated EBITDA; or consolidated annual profit before tax.

Guidance Note 1 will also be updated to provide guidance on where ASX may accept less than 2 full financial years of audited accounts for an entity applying for admission under the assets test and where ASX may

accept less than 2 full financial years of audited accounts for a significant entity or business acquired by the entity applying for admission under the assets test in connection with, or in the 12 months prior to, its application for admission. The two areas where ASX would accept less than 2 full financial years of audited accounts set out in the guidance relate to circumstances where the entity has an operating history of less than the requirement, and where the entity has undergone such a major and transformative change during its most recent financial year that the accounts for the previous financial year would not provide any meaningful information to investors.

Guidance Note 1 will also be amended to provide guidance in relation to when special purpose financial statements may be acceptable.

ASX consulted on a proposal to require entities seeking admission under the assets test to produce audited accounts for the last 3 full financial years prior to admission. Where an entity is more than 8 months into the current financial year, it was proposed that the entity also be required to produce audited or reviewed accounts for the last half year. ASX also proposed to include a requirement for entities seeking admission under the assets test that were proposing at or ahead of their listing to acquire another entity or business to produce 3 full financial years of audited accounts for the entity or business and, where the entity or business is more than 8 months into the current financial year, to produce audited or reviewed accounts for the last half year.

A wide range of stakeholders were supportive of ASX introducing a base case requirement that entities seeking admission provide 3 full financial years of audited accounts in their written submissions. This support was subject to ASX clarifying that start-up entities who do not have an operating history of 3 years would not be restricted from listing by this requirement.

A large number of respondents who supported in-principle the requirement for the listing applicant to provide 3 full financial years of audited accounts, were not supportive of the requirement being applied to any entity or business being acquired by the listing applicant at or ahead of listing. It was suggested that a materiality threshold should apply.

A number of the top tier accounting firms and other respondents were not supportive of the proposal for 3 full financial years of audited accounts on the basis of the significant compliance costs and time associated with the preparation of audited historical information. These respondents highlighted that it would likely inhibit early stage technology and innovation entities from listing and accessing capital.

The accounting firms also expressed some concerns about the practical difficulties of obtaining audited historical information for some early stage entities seeking admission under the assets test, particularly in relation to the entities or businesses acquired by the applicant in the 12 months prior to listing. In further targeted consultation undertaken with these firms, they indicated that a reduction in the period for which audited historical information is required, the introduction of a materiality/significance threshold and guidance as to when special purpose accounts may be accepted, would largely address their concerns.

The majority of respondents emphasised the importance of transparently setting out in guidance the circumstances where less than 3 years of audited accounts would be accepted, to provide certainty to potential listing applicants.

In assessing the feedback received, ASX has formed the view that introducing a requirement for 2 full years of audited accounts for entities admitted under the assets test and for acquisitions of a significant entity or business by the applicant in the 12 months prior to listing, addresses the feedback received through the consultation.

The case for a third year of audited accounts for entities seeking admission under the assets test is not strong compared to that for entities seeking admission under the profits test, where the key objective is to demonstrate a 3 year track record of profitability and that the entity has a sustainable business. The disclosure of 2 full financial years of accounts by entities admitted under the assets test will provide investors with 2 points of comparison with the pro forma accounts. The new requirement will also provide investors with greater assurance about the entity's assets, liabilities and financial performance. Requiring only two years of audited accounts will also assist in managing some of the practical difficulties and costs associated with obtaining audited historical financial information for early stage entities (which typically seek admission under the assets test).

ASX considers that the requirement for the entity seeking admission to provide 2 full financial years of audited financial accounts for any significant entities or businesses it has acquired in the 12 months prior to applying for admission, or is proposing to acquire in connection with its listing, will ensure that the audited historical information that must be provided is significant, relevant and informative for investors in the context of the financial condition of the entity seeking admission. This is important given the significant compliance costs and time associated with the preparation of audited historical accounts.

ASX also considers that the requirement for 2 full financial years of audited accounts will improve the quality and integrity of the financial information provided to it and the market. This will assist ASX in assessing the suitability of an entity seeking admission under the assets test. It will also provide a better basis for investors making an investment decision and provide them with greater assurance of the financial condition of an entity in which they are investing.

ASX consulted extensively with ASIC about its proposed changes to Regulatory Guide 228 *Prospectuses: Effective disclosure for retail investors*, to minimise any potential inconsistencies between ASX and ASIC's requirements around the requirement for audited accounts. As a result, a number of changes will be made to Guidance Note 1 to reduce areas of potential inconsistency. ASX will also publish explanatory material setting out how ASIC's and ASX's expectations work together in practice.

ASX's discretion to refuse admission to the official list

The Introduction to the ASX Listing Rules and Guidance Note 1 will be amended to emphasise ASX's absolute discretion on admission and quotation decisions, and to confirm that ASX takes into account the reputation, integrity and efficiency of its market in exercising these discretions.

Guidance Note 1 will also be amended to provide:

- additional examples of when ASX may exercise its discretion not to admit an entity to the official list; and

- additional examples of circumstances that may indicate that an applicant does not have an acceptable structure and operations for a listed entity.

These changes were supported by the respondents to the consultation who commented on them. These respondents were generally supportive of ASX maintaining its discretionary powers and making assessments as to suitability for listing consistent with its statutory obligations. There was broad support for the proposed examples of the factors ASX would consider in exercising its discretionary powers.

Following consultation, further examples of when ASX may exercise its discretion to not admit an entity to the official list and of circumstances that may indicate that an applicant does not have an acceptable

structure and operations for a listed entity have been included in Guidance Note 1. The additional examples reflect ASX's recent experiences in assessing suitability for listing through the pre-vetting process put in place earlier this year.

These changes to Guidance Note 1 provide the market and potential listing applicants with greater transparency of the factors that ASX takes into account when exercising its discretion on admission and quotation decisions.[6]

Foreign exempt listings

Listing Rule 1.11 will be amended to provide that for a foreign entity to be eligible to be listed on ASX as a foreign exempt listing it must have its primary listing on an overseas stock exchange or market that is acceptable to ASX, rather than simply being a member of the World Federation of Exchanges (WFE). Guidance Note 4 will be amended to include guidance on the home exchanges ASX generally considers acceptable for these purposes. The home exchanges included in the guidance are Borsa Italiana, Deutsche Börse, EuroNext (Amsterdam), EuroNext (Brussels), EuroNext (Lisbon), EuroNext (Paris), Frankfurt Stock Exchange, HKSE, LSE, SGX, SIX Swiss Exchange, TSE (Tokyo), TSX (Toronto), NASDAQ, NYSE, NZX, JSE and Bursa Malaysia.

This tightening of the admission criteria for foreign exempt listings is appropriate given that they 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. The WFE has a very broad membership and not all of its member exchanges have a regulatory framework equivalent to that applying to ASX listed entities.

Listing Rule 1.13 will also be amended to introduce the requirement for a foreign exempt listing to have a minimum market capitalisation of at least $2,000 million as an alternative to meeting the requirement to have an NTA of at least $2,000 million.

The introduction an alternative pathway for the admission of foreign exempt listings by satisfying a minimum market capitalisation threshold under the assets test provides consistency with the admission regime for standard ASX listings, albeit at a significantly higher financial threshold.

Both of these proposed changes were supported by a wide range of stakeholders in their written responses to the consultation paper.

Policy change for backdoor listings

ASX announced in its consultation paper an immediate policy change whereby an entity announcing a backdoor listing transaction would immediately have its securities suspended from trading. Prior to this, trading in an entity's securities was permitted to continue following the announcement of a backdoor listing transaction up until shareholders approved the transaction. Following shareholder approval, the entity was suspended until it had re-complied with ASX's admission and quotation requirements.

This policy change was aimed at addressing market integrity concerns ASX increasingly had about the quality and level of disclosures being made by listed entities at the time of announcing a backdoor listing transaction.

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[6] To enhance transparency and assist stakeholders to understand how ASX interprets and applies its Listing Rules, Listings Compliance also publishes on a regular basis high level reasons why ASX has declined certain listing and waiver applications. The Listing and Waiver Applications Declined by ASX has been published for the periods 1 January 2016 – 30 June 2016 and 1 July 2016 – 30 September 2016 on the ASX website.

Following consultation with the market, ASX will make a further policy change to prescribe new minimum disclosure requirements for the announcement of a backdoor listing transaction. Under these new arrangements, ASX will only allow an entity's securities to resume trading after the announcement if (and only if) the announcement contains all of the information set out in Annexure A to Guidance Note 12 and ASX is otherwise satisfied that the announcement includes sufficient information about the transaction for trading in the entity's securities to take place on a reasonably informed basis.

The information prescribed in Annexure A to Guidance Note 12 includes information about:

- the material terms of the transaction;
- the target's principal activities and business model, including any key risks;
- the impact of the transaction on the entity's capital and structure;
- any person who will acquire control of the entity as a result of the transaction;
- whether the entity or target has issued securities in the 6 months preceding the announcement, and the details of any such issue;
- whether the entity or target is proposing to issue securities, and the details of any such issue; and
- the financial accounts of the target.

Where an entity does not meet the prescribed disclosure requirements in its announcement, its securities will be suspended from quotation and will remain suspended until a supplementary announcement disclosing the information required is given to ASX for release to the market, or the entity has re-complied with ASX's admission and quotation requirements, or has made an announcement that the transaction is no longer proceeding.

The information about security issues in the 6 months preceding the announcement will assist ASX to identify if the entity or target has conducted a pre-emptive capital raising ahead of the proposed transaction, and to take remedial action if required, which may include suspension of the entity's securities.

The new policy settings effectively provide a choice to entities announcing a backdoor listing transaction, either to comply with the additional requirements prescribed in Guidance Note 12 and have their securities resume trading following the announcement, or to go into suspension. This responds to stakeholder concerns expressed through the consultation about taking away the market for these securities following the announcement and, at the same time, addresses ASX's market integrity concerns, particularly those relating to the level of disclosure required to provide for reasonably informed trading.

ASX undertook targeted consultation with key stakeholders active in the backdoor listing market in Perth on ASX's market integrity concerns associated with backdoor listing transactions and the new regulatory arrangements outlined above. These stakeholders were broadly supportive of the new arrangements that are being put in place.

Other amendments

ASX is also making a number of other drafting changes to update the ASX Listing Rules, including:

- amending the admission requirements across all categories of listings – ASX listings, ASX debt listings and ASX foreign exempt listings – to make them clearer and more easily understood;
- clarifying the requirements across all categories of listings for an entity either to have its securities, or CDIs over its securities, approved by ASX Settlement (these approvals allow settlement and registration of title in the entity's securities to occur electronically through CHESS);
- removing the requirements across all categories of listings for foreign entities to maintain a certificated register in Australia;
- reinforcing the requirement for foreign listed companies and for foreign responsible entities of listed trusts to register as foreign companies carrying on business in Australia under the Corporations Act by including in Chapter 12 new rules (listing rules 12.6A and 12.6B) imposing an ongoing requirement to maintain that registration;
- inserting a number of additional defined terms – 'Australian company', 'Australian entity', 'Australian trust', 'foreign company', 'foreign entity', 'foreign trust' and 'responsible entity' - to more clearly distinguish between Australian and foreign entities; and
- some other drafting refinements.

ASX received very little feedback on these changes in the consultation.

ASX also consulted on some refinements to the requirements in the listing rules for 'qualifying NZ entities' and issuers of wholesale debt securities to register as a foreign company carrying on business in Australia under Part 5B.2 of the Corporations Act. Following discussions with ASIC about the regulatory benefits derived from this registration requirement, ASX is no longer proceeding with those refinements.