

ASX LISTING RULE CHANGES: WHAT YOU NEED TO KNOW

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The proposed [changes to the ASX Listing Rules](#) – which will come into effect on 1 December 2019 – are numerous.

At a recent roadshow of the changes held at ASX's Bridge Street headquarters, Kevin Lewis, ASX's Chief Compliance Officer and architect of the Rules reform, even apologised for the slew of amendments; conceding that what started life in 2017 as an idea 'to fix Appendix 3B' somehow snowballed into the major reform now facing listed companies and companies considering a float. However, the changes are – by and large – helpful and the new and updated guidance that ASX has released with the changes also provides far greater clarity for ASX listed entities and their advisers.

At the roadshow, ASX provided some guidance on which revisions to pay greatest attention to (the full presentation slideshow can be found [here](#)). The highlights reel included changes to rules affecting acquisitions/disposals, reporting requirements, shareholder meetings and, significantly, the granting of a new power to ASX to issue public censures for breaches of the Rules.

G+T has compiled this guide to assist you in breaking down the changes that will most affect your business. It is a very high level summary as a large proportion of the changes are either highly technical or in the nature of "tidy ups" to the rules to remove ambiguities and inconsistencies.

CHANGES RELEVANT TO DAY TO DAY MATTERS

Change	Current rule / requirement	New rule / requirement	More Information
Quarterly Reporting – activity statements	Under current LR 4.7B a company that listed under the ‘assets test’ and had more than half of its total tangible assets in cash is required to lodge a quarterly cashflow report (Appendix 4C).	Under a new LR 4.7C These companies will now also need to provide a quarterly activities statement with its Appendix 4C, which will be required to: <ul style="list-style-type: none"> + Report against their use of funds statement in its listing prospectus or expenditure program provided to ASX that covers the relevant period, and explain any material variances; and + Disclose details of, and the reasons for, any payments to an associate of a related party. 	See Chapter 4 in the changes to the Listing Rules
Quarterly reporting – forward looking information	Under the current Appendix 4C, companies must provide estimated cash outflows for the next quarter which, for revenue generated entities, implicitly requires disclosure of forecast revenue for the quarter as well.	Under the new Appendix 4C, if the available cash is less than 2 quarters worth, the company must now answer some questions concerning whether the rate of cash outflow is expected to remain the same, whether the company proposes to take steps to raise more capital (and what those are) and whether it expects to be able to continue its operations to meet its stated objectives.	Updated Appendix 4C and updated Guidance Note 23
Market announcements	LR 15.5 sets out various requirements for ASX announcements.	The new rules will require that if a document is for release to the market, it must: <ul style="list-style-type: none"> + Include (or be sent with a covering letter that includes) the company’s name, address and corporate logo; + Be dated; + Identify the title of body or name and title of officer who authorized the document to be given to ASX (in most cases this will be the Company Secretary or for key announcements, the Board); and + If an announcement under LR 3.1, include the name title and contact details of a person who shareholders or interested parties can contact with further queries. 	See updated LR 15.5 the changes to the Listing Rules



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Meetings of members – notices	Specific rules apply to Notice of Meeting (NOM) requirements with respect to the disclosure of information for relevant Listing Rule approvals.	<p>Under the new rules, ASX is introducing additional disclosure requirements in NOMs including:</p> <ul style="list-style-type: none"> + Requiring companies to list the names of certain recipients of securities (where known and likely to be material to the decision of security holders) in relation to approvals or ratifications of share issues (e.g. placements); + Minimum content requirements for resolutions approving related party transactions under LR 10.1; + Requiring disclosure of a director’s total current remuneration package for resolutions approving the grant of equity incentives under an employee incentive scheme to a director or associate; and + Requiring notices to summarise relevant listing rules and explain the consequences if the resolution is and is not passed (and ASX has provided in its various guidance notes, the suggested text to do this). <p>The new Guidance Note 35 will also require all Listing Rule resolutions be decided by a poll rather than a show of hands.</p>	Various changes to the Listing Rules and New Guidance Note 35
Meetings of members – voting	The current LR 3.13.2 requires companies to advise ASX of the outcome of each resolution put to a meeting of security holders immediately after the meeting has been held.	<p>The new LR 3.13.2 will require an entity to disclose to ASX for each resolution:</p> <ul style="list-style-type: none"> + The number and description of the resolution; + Whether the resolution was passed or not passed; + Whether the resolution was decided through a poll or show of hands; and + The aggregate number of securities for which valid proxies were received before the meeting. <p>ASX will publish the format to be used.</p>	Amended LR 3.13.2 in the changes to the Listing Rules
Meetings of members – voting exclusions	Chapter 14 of the current Listing Rules sets out persons that are excluded from voting on specific listing rule resolutions.	<p>ASX is updating the table in LR 14.11.1 in relation to the following Listing Rules so that voting restrictions will also apply to persons ‘who will receive a material benefit as a result of the transaction’:</p> <ul style="list-style-type: none"> + LR 10.1 and 10.11 (related party transactions); + LR 11.1.2 and 11.2 (significant changes to nature or scale); and + LR 11.4 (no disposal of major asset without offer). <p>ASX has added similar voting exclusions in relation to LR 7.1A, 7.2 Exception 6 and 7.9 Exception 6.</p>	Amended LR 14.11.1 in the changes to the Listing Rules Updated Guidance Notes: 21 , 24 , 25 , 12 and 13

Change	Current rule / requirement	New rule / requirement	More Information
Closing date for director nominations	Under the current LR 3.13.1, if directors are to be elected at a shareholder meeting, the company must tell ASX the date of the meeting at least 5 business days before the closing date for the receipt of director nominations.	Under the new rules, in addition to telling ASX the date of the meeting, a company must also disclose the closing date for the receipt of director nominations at least 5 business days before the closing date.	See changes to LR 3.13.1 in the changes to the Listing Rules
Forms announcing payment or non-payment of dividends		ASX is amending LR 3.21 and adding a new LR 3.22 to clarify rules around the announcements of dividends, distributions and interest payments. ASX is also making improvements to the existing corporate action forms in Appendices 3A.1 to 3A.6.	See Chapter 3 in the changes to the Listing Rules , and the updated Appendices 3A.1 – 3A.6 once available
CEO and Chair AGM speeches	The current LR 3.13.1 requires listed companies to provide ASX with a copy of any prepared speech that the Chairperson will give at a shareholder meeting.	The amended LR 3.13.3 will extend this requirement to prepared speeches of the company's CEO.	Amended LR 3.13.3 in the changes to the Listing Rules
Distribution schedule in Annual Reports	LR 4.10.7 currently requires listed companies to include a distribution schedule of the number of holders in each class of securities in certain categories.	ASX will amend LR 4.10.7 so that the distribution must also include the total percentage of the securities in a class held by the holders in each category.	Amended LR 4.10.7 in the changes to the Listing Rules

MISCELLANEOUS CHANGES

Change	Current rule / requirement	New rule / requirement	More Information
Censure	No equivalent current rule.	ASX will introduce a new LR 18.8A, which gives ASX the power to formally censure a company in cases where ASX considers that the company has breached the Listing Rules, or a condition or requirement imposed under the Listing Rules. Importantly, the censure and the reasons for the censure may be released to the market. Entities will have the opportunity to review the censure before release, and a note to the new rule says that a breach will need to be “egregious” before this step is taken.	See Chapter 18 in the changes to the Listing Rules
ASX Liaison Officer training	Under the current LR 1.1 Condition 13, a company seeking admission to the official list must have a person available during market hours who is responsible for communication with ASX on Listing Rule issues (Communication Officer).	ASX is introducing a requirement that Communication Officers complete an approved listing rule compliance course and attain a satisfactory pass mark in the exam for that course. This requirement will not take effect until July 2020 as ASX is in the process of completing preparation of the online course.	See change to LR 1.1, Condition 13 in the changes to the Listing Rules
LICs / LITs	Various rules relating to Listed Investment Trusts (LITs) and Listed Investment Companies (LICs).	There are a number of updates relevant to LITs and LICs which are summarised on Slide 64 of the Roadshow presentation. Slide 64 of the Roadshow presentation	Slide 64 of the Roadshow presentation

CHANGES RELEVANT TO IPOS

Change	Current rule / requirement	New rule / requirement	More Information
Working capital requirement under the 'assets test'	Under the current LR1.3.5 a company admitted under the Assets test is required to have working capital of at least \$1.5 million, including its budgeted revenue after administration costs for the first full financial year following listing, in its working capital calculations.	Under the new LR1.3.3, companies can no longer include the first 12 months of projected revenue in the calculation of its working capital. LR1.3.3 will now also require entities to set out in their prospectus/PDS the objectives they are seeking to achieve from its admission to ASX and the capital raising undertaken in connection with that	Updated Guidance Note 1 and Chapter 1 of the changes to the Listing Rules
Mandatory escrow	Under the current LR9.1.3 mandatory escrow is imposed on some or all of the existing security holders of a company seeking admission under the 'assets test', that is not able to demonstrate acceptable track record of profitability or revenue. Formal restriction deeds are required to be signed and provided to ASX.	In order to reduce administrative complexity (and greenmail risk), under the new rules, only 'significant holders' and controllers must sign restriction deeds. Significant holders include: related parties, promoters, substantial (10%+) holders, vendors of classified assets (where 10 or fewer) and their associates. Other holders can provide a new Appendix 9C 'restriction notice' – a standard form that does not require a signature. It is necessary to include in your constitution appropriate provisions to enable the 'restriction notice' regime to be legally enforceable against those restricted holders.	New Guidance Note 11
Good fame and character tests	Under the current LR1.1 Condition 20, all directors and proposed directors of a company applying for admission to the ASX official list must be of 'good fame and character'.	This requirement will be extended to a company's CEO and CFO (where they do not already sit on the Board).	Updated Guidance Note 1
New grounds on which ASX may reject admission	Under the current Guidance Note 1 ASX sets out examples of where it may exercise its absolute discretion to refuse admission to the official list.	In the updated Guidance Note 1, ASX has added two additional examples of where it may reject a listing application. These include where: + The Applicant has entered into certain agreements / transactions that would have required shareholder approval (if entered into post-listing) and ASX has concerns about the commerciality of the transaction; and/or + ASX has prior unacceptable dealings with the company's CEO or CFO.	Updated Guidance Note 1
Profits test requirements	Under the current LR 1.2.5A, companies seeking admission to the official list under the 'profits test' must provide ASX with a statement from the directors that says the directors have made enquiries and nothing has come to their attention to suggest that the entity is not continuing to earn profit from continuing operations.	This rule will be amended so that the required statement of directors can be included in the entity's prospectus, PDS or information memorandum (rather than being separately provided to ASX). It will still be open to provide this statement separately to ASX if it is desired to avoid including this in the prospectus.	See LR1.2.6 in the changes to the Listing Rules

CHANGES RELEVANT TO SECURITY ISSUES AND CAPITAL RAISINGS

Change	Current rule / requirement	New rule / requirement	More Information
New Appendix 2A and updated Appendix 3B	Under current LR 2.7, a company making an application for the quotation of securities must complete and file with ASX an Appendix 3B whilst under LR 3.10.3 certain information is required to be provided about proposed equity issues.	<p>ASX has introduced a new smart form Appendix 2A (Application for Quotation of Securities) to replace the old Appendix 3B and a new smart form Appendix 3B (Notification of Proposed Issue of Securities) so that the information required by LR 3.10.3 is standardised.</p> <p>For securities that are issued and quoted immediately, the Appendix 2A is the appropriate form to be using to meet both the quotation and the notification requirements.</p> <p>There is a new form (Appendix 3G) for notifications of other equity securities which will not be quoted on ASX immediately, such as issues of equity securities under an employee incentive scheme.</p> <p>Companies may continue to use the existing Appendix 3B until the end of January 2020 during the transition period.</p>	See updated Appendices 2A, 3B and 3G, once available
Disclosure about underwriting arrangements	The only disclosure of underwriting arrangements that is required is underwriting fees in relation to pro rata offers (i.e. rights offers).	Under the new rules, ASX requires more disclosure about underwriting arrangements. The disclosure must include: the name of the underwriter(s), the amount underwritten, any fees or commissions payable and a summary of termination events under the underwriting agreement. This applies not only to rights offers, but also to underwritten institutional placements as well as to underwritten DRPs and offers of options.	See various updates in the changes to the Listing Rules and updated Appendix 3B, once available
Issues of securities to related persons	Unless an exception applies, shareholder approval is required for an issue of securities to a related party or others within ASX's discretion deemed to be in a similar position.	<p>Under revised LR 10.11, ASX has set out three additional categories of person who may not be issued securities without shareholder approval (unless an exception applies):</p> <ul style="list-style-type: none"> + A person who is, or was at any time in 6 months before the issue or agreement, a substantial (30%+) holder in the entity (LR 10.11.2). + A person who is, or was at any time in 6 months before the issue or agreement, a substantial (10%+) holder in the entity and who has nominated a director to the board of the entity pursuant to a relevant agreement which gives them a right or expectation to do so (LR 10.11.3). + An associate of a person referred to in LR 10.11.1 (being a related party) or 10.11.3 (see above). 	Revised LR 10.11 in the changes to the Listing Rules
10% placement capacity 'top up'	The 10% 'top up' to placement capacity available to companies under the current LR 7.1A can be used to issue securities for cash or non-cash consideration.	Under the new rules, companies will be able to use their 10% top up for the issue of shares for cash consideration only (e.g. the issue of shares cannot be consideration for an acquisition).	New Guidance Note 21

Change	Current rule / requirement	New rule / requirement	More Information
Disclosure of allocation policy for shortfall in rights offers	Offer documents in relation to shortfall rights offers must preserve for the directors the right to issue shortfall in their discretion.	Offer documents must now also disclose what the allocation policy will be in relation to that shortfall. This disclosure needs to be 'reasonably specific' (i.e. in addition to stating that the shortfall may be allocated at the directors' discretion, it should also state the factors directors will take into account in exercising that discretion).	Revised Exception 3 to Listing Rule 7.2 in the changes to the Listing Rules and the New Guidance Note 21
Convertible Note issues	No meaningful guidance on how LR 7.1 applies to convertible securities or ASX's approach to approval of their terms for the purposes of LR 6.1.	ASX has identified features that may render convertibles inappropriate, including those structured so that the exercise right may only be exercised to the extent that it doesn't trigger a securityholder approval requirement under LR 7.1. Additionally, in some cases, the lack of a floor price in the conversion price of a convertible note may be of concern to ASX. Seek advice if contemplating a convertible note issue.	New Guidance Note 21





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