

ASX CONSULTATION PAPER NEW ADMISSION REQUIREMENTS FOR LISTED ENTITIES

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Legal Briefings - By **Rebecca Maslen-Stannage**, **Philippa Stone** and **Katie Simmonds**

We have reviewed ASX's consultation paper and summarised the proposed changes to its requirements for admission to the ASX official list.

IN BRIEF

ASX has released a consultation paper which it indicates is aimed at updating its requirements for admission to the ASX official list to maintain the quality, integrity and international competitiveness of ASX. *Updating ASX's admission requirements for listed entities* ('**consultation paper**') was released on 12 May 2016 and is intended to update, improve and clarify the drafting and operation of the ASX admission rules.

The key changes proposed are:

- increasing the financial thresholds for listing - both for the profit test and the assets tests;
- introducing a 20% minimum free float requirement;
- changing the 'spread test' to better demonstrate a sufficient level of investor interest in the entity and its securities to justify listing;
- making the minimum working capital requirements consistent across all entities admitted under the assets test; and
- introducing a requirement for entities admitted under the assets test to provide audited

accounts for the last three full financial years.

- ASX also proposes to update its Guidance Notes to include further examples of application of the listing rule requirements.

INCREASING THE FINANCIAL THRESHOLDS FOR LISTING

Entities must meet either the profit test or the asset test to qualify for listing on ASX. ASX is proposing to increase both the profit and assets test as follows:

Current test	Proposed new test
<p>Profit test Requires that an entity:</p> <ul style="list-style-type: none">• is a going concern and has conducted the same main business activity during the last 3 full financial years prior to admission;• has aggregated profit of at least \$1 million from continuing operations for the last 3 full financial years prior to admission; and• has consolidated profit from continuing operations of at least \$400,000 for the 12 months prior to admission.	<p>Limb 3 to be increased to at least \$500,000. Test to otherwise remain unchanged.</p>
<p>Asset test</p> <ul style="list-style-type: none">• Minimum net tangible assets (NTA) of \$3 million; or• Minimum market capitalisation of \$10 million.	<ul style="list-style-type: none">• NTA of at least \$5 million; or• Market capitalisation of at least \$20 million.

INTRODUCING A 20% MINIMUM FREE FLOAT REQUIREMENT

ASX does not currently have a formal requirement in place regarding the minimum proportion of an entity’s securities that must be freely available at listing for investors to freely trade in the public market (**‘free float’**). ASX does generally expect that entities will have a free float of 10%, however to date this expectation has been issued only through guidance and ASX has taken a flexible approach to enforcing this preference if the entity has plans to increase its free float after listing.

The consultation paper proposes introduction of a 20% minimum free float requirement for ASX listings at the time of admission. ‘Free float’ will be defined as the percentage of the entity’s main class of securities that are not restricted securities or subject to voluntary escrow arrangements, and that are held by ‘non-affiliated security holders’. ASX notes by point of reference that peer exchanges ‘generally have a rules-based minimum free-float requirement in the range of 12-25%’.

CHANGING THE SPREAD TEST

Entities applying for admission will be subject to a simplified spread test, aimed at demonstrating sufficient investor interest without materially changing the overall financial threshold for entities seeking to list – in summary, needing fewer holders but with holdings of a higher dollar value:

Current test	Proposed new test
<p>ASX’s spread test can be satisfied in one of three ways:</p> <ul style="list-style-type: none"> • by having 400 security holders who hold a parcel of securities with a value of at least \$2,000; or • by having 350 security holders who hold a parcel of securities with a value of at least \$2,000, where there is a free float of at least 25%; or • by having 300 security holders who hold a parcel of securities with a value of at least \$2,000, where there is a free float of at least 50%. 	<p>ASX’s proposed new spread test requires:</p> <ul style="list-style-type: none"> • 200 security holders if the entity has a free float of less than A\$50 million, or 100 security holders if the entity has a free float of A\$50 million or more; and • each security holder counted towards spread must hold a parcel of securities with a value of at least A\$5,000.

STANDARDISING WORKING CAPITAL REQUIREMENTS

All entities admitted under the assets test currently must have \$1.5 million in working capital based on budgeted revenue for the first financial year after admission, with the additional requirement that mining and oil & gas exploration entities allow for budgeted administration costs and various other operational costs.

ASX is proposing to standardise the application of the minimum working capital requirements, by requiring each entity admitted under the assets test rule to have \$1.5 million working capital available after accounting for (in the first year after listing) budgeted revenue and budgeted costs of administration and of acquiring any assets referred to in the entity's prospectus, PDS or information memorandum.

AUDITED ACCOUNTS FROM ASSET TEST ENTITIES

Entities applying for admission under the asset test can currently provide unaudited financial accounts, and provide accounts for a period of shorter than 3 years - which is a more lenient requirement for provision of financial information than for entities seeking admission under the profit test.

The consultation paper proposes introduction of new requirements for entities seeking admission under the assets test to produce:

- audited accounts for the last 3 full financial years. If the accounts for the last full financial year are more than 8 months old, the entity would also be required to produce audited or reviewed accounts for the last half year (i.e. as currently applies to the accounts for entities seeking listing under the profit test); and
- 3 years of audited financial statements for any business to be acquired by the entity at or ahead of listing.

In each case, the audit report must not contain 'a modified opinion, emphasis of matter or other matter that ASX considers unacceptable'.

ASX has acknowledged that an entity seeking admission under the assets test may not be in a position to provide 3 years of audited accounts (for example, given its position in the business cycle), and noted that ASX will have discretion to accept less than 3 full years of audited accounts, or to accept a modified audit opinion, but that it will 'generally only do so in the circumstances where ASIC will accept' less than 3 full years of audited accounts, or a modified opinion, in a disclosure document.

ASX is interested in feedback on whether there are circumstances other than those set out in ASIC Regulatory Guide 228, where it should accept accounts other than as set out in the new rules. ASIC is simultaneously consulting on the proposed changes to its policy set out in Regulatory Guide 228, regarding the circumstances in which it will accept flexible application of the above requirements in disclosure documents.

REINFORCING DISCRETION TO REFUSE ADMISSION

It is proposed that the introduction to the ASX listing rules be updated to reinforce ASX's absolute discretion on admission and quotation decisions. ASX intends to specify that it will 'take into account the reputation, integrity and efficiency of its market in exercising these discretions'. Guidance Note 1 will also be updated to include a (non-exhaustive, but extensive) list of examples where ASX may exercise its discretion to refuse entry to the official list, which would include for example where ASX has had prior unacceptable dealings with the applicant, or its proposed directors or professional advisers.

CHANGES TO ASX FOREIGN EXEMPT LISTINGS

A special regime applies to entities with a main listing on an overseas market, to maintain a secondary listing on the ASX market as an 'ASX Exempt Listing'. Without replicating that regime in full here, in brief it is proposed that the overseas listing of an entity applying under this regime must be one 'acceptable to ASX', and that the assets test for foreign exempt listings be amended to require either minimum NTA or market capitalisation of \$2,000 million.

CONSULTATION

The consultation paper proposes a number of changes by which ASX aims to ensure that it continues to be able to operate as a high-quality, efficient and reputable market. The proposed changes are intended to tighten the admission requirements for listing on ASX in line with achieving this intention, and do not involve dramatic changes. However, the consultation phase is designed to ensure that the changes finally approved are appropriate for stakeholders.

Interested parties have until Friday 24th June 2016 to comment on the proposed changes to the ASX listing rules.

KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



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