

ASX listing rules update

New requirement for trading policies and proposed changes to facilitate accelerated rights issues

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LegalTalk Alert

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Introduction

On 1 January 2011, several changes to the ASX Listing Rules came into effect requiring companies to adopt a trading policy. Listed entities must now ensure that they have a policy setting out rules for trading in its securities by their senior management team that comply with the requirements in Chapter 12 of the ASX Listing Rules. The ASX has released a new Guidance Note 27 to assist entities to comply with the new obligations. As part of other reforms, the ASX has also recently issued a Consultation Paper and Exposure Draft on proposed changes to listing rule 7.1 to facilitate common forms of capital raisings.

Trading Policies

The new trading policy rules apply to all ASX listed entities other than entities admitted as an ASX Foreign Exempt Listing or an ASX Debt Listing. Entities covered by the new rules must now have a trading policy that sets out at least the following information:

- The periods during which an entity's key management personnel are prohibited from trading in the entity's securities, known as a "closed period". The term "key management personnel" is defined by reference to Accounting Standard AASB 124 and means "those persons having authority and responsibility for planning, directing and controlling the activities of the entity, directly or indirectly, including any director (whether executive or otherwise) of that entity".
- The restrictions on trading that apply to the entity's key management personnel.
- Any trading which is not subject to the entity's trading policy.

- Any exceptional circumstances in which the entity's key management personnel may be permitted to trade during a prohibited period with prior written clearance. A "prohibited period" includes any closed period and additional periods where trading is restricted by the entity because it is considering whether an exception to its continuous disclosure obligations apply.

The listing rules do not define "exceptional circumstances". However, Guidance Note 27 provides that severe financial hardship may constitute exceptional circumstances.

- The procedures for key management personnel to obtain prior written clearance to trade during a prohibited period.

An entity's trading policy must be given to the company announcements office for release to the market. If there are any material changes to an entity's trading policy the entity is required to provide its amended policy to ASX for public release within 5 business days. ASX also has the power to demand a listed entity to immediately provide its trading policy.

In line with the changes, an unlisted entity applying for admission to the official list must have a current trading policy which fulfils the above requirements.

Changes to the Appendix 3Y

Where a Director lodges a change of director's interest notice, the Director is now required to disclose whether the change of interest occurred during a closed period where prior written clearance was required. If so, the Director must advise the exchange whether such clearance was given and on what date. It is recommended that Directors keep a clear written record of any clearances given in case they are required to give proof.

Proposed New Rules for Capital Raisings

On 17 January 2011, ASX released a Consultation Paper and Exposure Draft relating to proposed listing rule amendments for common forms of capital raisings. The changes are intended to facilitate accelerated rights issues that fall under the prospectus disclosure relief in ASIC Class Order 08/35. Accelerated rights issues are used to raise funds more quickly than a traditional rights issue by first offering securities to institutional investors followed by retail investors. Examples of accelerated rights issues include "Jumbo", "Rapid" and "Sareo" issues.

Subject to the exceptions in listing rule 7.2, listing rule 7.1 limits the number of equity securities an entity can issue in each 12-month period to 15% of its issued ordinary share capital. One of the current exceptions in listing rule 7.2 is a pro-rata securities offering to all current shareholders, that is, a traditional rights issue. However, the exception does not extend to accelerated rights issues. Under the proposal, accelerated rights issues will form another exception under listing rule 7.2.

The changes would also insert another exception in listing rule 10.12 to allow an entity to issue securities, pursuant to an accelerated rights issue, to a related party of the entity, without requiring shareholder approval. Until these changes take effect, companies proposing to carry out accelerated rights issues may need to seek ASX waivers from listing rules 7.1 and 10.11.

ASX's Consultation Paper also includes proposed timetables for carrying out renounceable and non-renounceable accelerated rights issues. The Consultation Paper is open for public comment until 25 February 2011.

Further information

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