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# LEGAL STUDIO

Continuing professional  
development

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## Simplifying or complicating? Impact of proposed changes to ASX listing rules

6 March 2019

### Overview

- In November 2018, ASX released its consultation paper which proposed a number of changes to the listing rules and guidance notes which effect both entities seeking admission and existing listed entities.
- Changes, if implemented, are proposed to take effect from 1 July 2019.
- First major update since 2016.
- Many of the proposed changes are likely to be well received as they:
  - provide greater clarity by confirming how ASX will interpret certain listing rule requirements; and
  - seek to simplify and streamline existing administrative processes
- Other amendments may not be well received as they impose a heavier burden on listed entities and their stakeholders.
- Changes also propose to broaden ASX's powers to operate the market and to monitor and enforce compliance
- This presentation will provide an overview of some of the more significant changes proposed both with respect to admission to listing and ongoing obligations for listed entities



# Changes proposed for entities seeking admission to ASX

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## Changes for entities seeking ASX admission

Subject	Proposed change
Working capital	<ul style="list-style-type: none"> <li>No longer permitted to include budgeted revenue and admin costs for \$1.5m working capital requirement for 'assets test' admitted entities</li> <li>Statement that funds will enable the accomplishment of objectives set out in prospectus</li> </ul>
Mandatory escrow	<ul style="list-style-type: none"> <li>Simplification of escrow categories</li> <li>Clarification of 'acceptable track record of revenue':               <ul style="list-style-type: none"> <li>going concern for 3 years with same main business;</li> <li>aggregate revenue for last 3 years of <math>\geq</math> \$30m;</li> <li>revenue for last 12 months of <math>\geq</math> \$20m;</li> <li>raising <math>\geq</math> \$20m in the IPO; and</li> <li>market cap at listing of <math>\geq</math> \$100m</li> </ul> </li> <li>Introduction of a two-tier escrow system – only significant holders (eg related parties, promoters, substantial holders) need escrow deeds</li> </ul>
Good fame and character	The 'good fame and character' requirement is proposed to be extended to cover CEOs
ASX liaison officer	ASX liaison officers will be required to undertake a listing compliance course and attain a satisfactory pass mark (will also apply to listed entities)

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## Changes for entities seeking ASX admission

Subject	Proposed change
Related party arrangements for new and re-compliance listings	<ul style="list-style-type: none"><li>• New and re-compliance listings will be scrutinised (where there are issues of securities) in the lead-up to, or following, announcement for issues to related parties, promoters or professional advisers at a significant discount</li><li>• If ASX forms the view that the purpose was not to raise genuinely needed capital but rather to confer a benefit, ASX will likely impose mandatory escrow</li><li>• Entities must disclose whether any adviser to the IPO has a material interest in the success of the IPO over and above its normal professional fees (and provide details)</li></ul>
Warranties to ASX	<p>Additional warranties to be added to the listing application:</p> <ul style="list-style-type: none"><li>• the securities to be quoted on ASX have been validly issued; and</li><li>• all of the relevant documents and information given to ASX are, or will be, accurate, complete and not misleading</li></ul>

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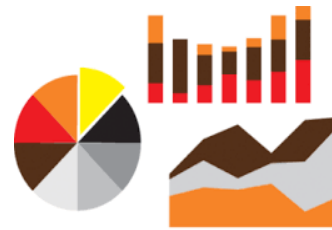
## Changes proposed for listed entities

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## Reporting changes – better disclosure, more burden?

- Reporting changes:
  - **Quarterly reporting** – Appendix 4C + update on business activities which:
    - reports against IPO use of funds disclosure or expenditure program provided to ASX and explains any material variances
    - explains material differences in cash flows between quarters
    - discloses details of, and reasons for, related party payments
  - **Notices of meeting** – additional disclosures include:
    - for approvals or ratifications of share issues – the names of recipients of shares where there are less than 10 recipients
    - introducing minimum content requirements for resolutions approving related party transactions under ASX Listing Rule 10.1
    - disclosing a director's total current remuneration package for resolutions approving the grant of equity incentives to a director
    - summarising relevant listing rules and explaining the consequences if the resolution is or not passed

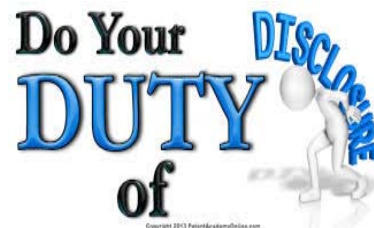


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## Disclosure changes – better disclosure, more burden?

- **Disclosure of underwriting arrangements** – prescribed disclosure of underwriting arrangements for certain capital markets transactions (eg. name of underwriter, extent of the underwriting, fee or commission payable, summary of material circumstances where underwriter has right to avoid or change its obligations)
- **NTA disclosure** – investment entities will need to provide the NTA backing of its securities as soon as it is available and, in any event, no later than 14 days after the end of each month. This accelerates when the information must be provided. Failure to provide this information will result in automatic suspension of its securities
- **Quality of disclosure** – If ASX has concerns with the quality of disclosure in a prospectus, explanatory statement etc, it will not accept an argument that ASIC has not raised any concerns as sufficient to allow the disclosure



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## Related party – party over?

- **Related parties and persons in a position of influence** – it is proposed that ASX will only waive the requirement for security holder approval for:
  - an acquisition / disposal of a significant asset to a person caught by Listing Rule 10.1 in **exceptional** circumstances
  - an issue of securities to a related or closely connected party in exceptional circumstances.

To receive a waiver there must be no reasonable prospect of the counterparty (either itself or through its connections to the Board or a controlling security holder) influencing the terms of issue or transaction to favour themselves at the expense of the entity.
- **Listed trusts** – Waivers from the requirement for security holder approval for transfers of significant assets from / to listed trusts and other funds managed by the responsible entities of listed trusts (which allows the set up of new unlisted funds or asset transfers to existing unlisted funds) were previously possible – such waivers will no longer be granted under the new proposals
- **Voting exclusions** – changes include:
  - exclusion statements for approvals for related party transactions and significant changes to nature or scale will be extended to apply to persons *‘who will receive a material benefit as a result of the transaction’* being a *‘benefit that is likely to include the recipient to vote differently from other shareholders’*; and
  - shares held by employee share trusts can only be voted where they have been allocated to a participant and the participant has directed the trustee to vote the shares (assuming the participant is not excluded from voting under the Listing Rules)



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## Placements – displacing loopholes

- **Placement capacity** – entities who have secured an additional 10% placement capacity under Listing Rule 7.1A may no longer have the ability to use this additional placement capacity for the issue of shares for non-cash consideration (eg. as consideration for an acquisition)
- **Changes to calculation of placement capacity** – the following changes are proposed:
  - placing shortfall – the directors must state as part of the offer that they reserve the right to issue the shortfall and what their allocation policy will be (including the factors they will take into account when exercising their discretion). The issue must occur no later than 3 months after the close of the offer and the issue price must not be less than the pro rata offer price; and
  - Entities issuing securities using their placement capacity under Listing Rule 7.1 will be required to complete a worksheet and submit to ASX when making a placement within its existing placement capacity



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## Major transactions – less spinning out of the rules

- **Divestment of major assets** – the new proposals significantly broaden what ASX intends to capture by ‘spin-outs’ – a “major asset” is an asset that constitutes 25% of the head entity’s consolidated equity interests, consolidated assets
- **Pre-emptive loans** – ASX will require full disclosure of details of pre-emptive loans (eg. loans given by a listed entity to another entity that it is proposing to enter into a significant transaction with, prior to entering into that transaction)

If the loan is material, ASX may make enquiries of the entity and publish the responses. If ASX believes that the loan has been structured to avoid compliance it will consider this to be a serious breach and take remedial action (eg. suspend quotation or terminate listing or direct entity to cancel or demand repayment of loan)



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## Suspension and other changes – redline abounds

- **Removal from listing following suspension** – trigger period before entities will be automatically removed from ASX as a result of being suspended will be shortened from three years to two years (unless ASX grants an extension)
- **Other changes** – other changes include:
  - Updated timetables for corporate actions (eg. specific timetables for schemes of arrangement, changes to record dates, payment dates, interest payment dates and quotation periods)
  - Timeframes for deferred settlement trading under certain corporate actions may be shortened and standardised
  - New processes for market announcements
  - New appendices for quotation of securities and proposed issues of securities announcements
  - Elimination of the need for a number of standard waivers



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# Changes to ASX's powers

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## The powers that (want to) be – naming and shaming

- Proposed amendments to Chapter 18 (which deals with ASX's ability to amend and enforce the listing rules) will:
  - clarify ASX's power to grant waivers and exercise compliance powers
  - facilitate ASX requiring information from entities (including under oath) about their compliance with any conditions or requirements imposed under the listing rules
  - give ASX the ability to:
    - disclose this information to the market; and
    - formally publicly censure entities where a breach is egregious



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## The powers that (want to) be – ASX as judge, jury and executioner

- ASX powers may extend to include:
  - cancelling or reversing an agreement or transaction;
  - enforcing provisions in an entity's constitution;
  - assessing an entity's compliance framework or requiring the entity to introduce a compliance framework.

If these powers are exercised they could have significant implications on the transactions undertaken by, or operations of, an entity.

- Changes are consistent with the focus in the market on regulatory compliance



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## Questions?



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## Key contacts



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