

Key Proposed Changes

- Increasing the financial thresholds for listing – both for the “profit test” and the “assets test”
- Introducing a minimum free float requirement
- Changing the “spread test” to decrease the number of investors and increase the minimum value of qualifying shareholdings
- Making the minimum AU\$1.5 million working capital requirements consistent across all entities admitted under the assets test
- Introducing a requirement for entities admitted under the assets test to provide audited accounts for the last three full financial years
- A number of additional changes which increase scrutiny on back door listings including the suspension of companies from announcement of the transaction, with this change taking effect immediately

Background

On 12 May 2016, the Australian Securities Exchange (**ASX**) released a consultation paper titled “Updating ASX’s admission requirements for listed entities” proposing a number of changes to ASX’s listing conditions to ensure that its market continues to be of quality and integrity, and remains internationally competitive.

What ASX is Proposing

The key proposed changes being considered by ASX include:

- a. Profits test** – Increasing the consolidated profit threshold under the profit test from AU\$400,000 to AU\$500,000, requiring entities to show this level of consolidated profit from continuing operations for the 12 months prior to admission. The requirement to demonstrate a minimum AU\$1 million aggregated profit over past three years will remain unchanged.
- b. Assets test** – Increasing the minimum net tangible assets required to meet the assets test from the existing AU\$3 million to AU\$5 million; and the alternative market capitalisation threshold from AU\$10 million to AU\$20 million.
- c. Free-Float** – Introducing a formal minimum free float (i.e. non-related party securities which are not restricted securities or subject to voluntary escrow) requirement of 20% aimed at striking an appropriate balance between supporting liquidity in the secondary market and supporting innovation and emerging growth industries.

d. Working capital – Requiring all companies listing on ASX and admitted under the assets test to have working capital of at least AU\$1.5 million after allowing for the first full year’s budgeted administration costs. Currently, this requirement only applies to mining and oil and gas exploration companies.

e. Spread – Decreasing the minimum number of investors to 200 investors if the entity has a free float of less than AU\$50 million; or 100 investors if the entity has a free float of AU\$50 million or more. In addition, investors will need to hold at least AU\$5,000 (rather than the existing AU\$2,000) worth of shares.

f. Audited accounts – Introducing a requirement for entities seeking admission under the assets test to produce audited accounts for the last three full financial years. ASX will have discretion to accept fewer years’ accounts (e.g. for start-ups) but proposes that it will generally only do so in circumstances where ASIC will accept less than three full years of audited accounts in a disclosure document.

g. Discretion to refuse admission – Updating the introduction of the ASX listing rules to reinforce ASX’s absolute discretion on admission and quotation decisions and to state that it will take into account the reputation, integrity and efficiency of its market in exercising these discretions.

Further Changes Relevant to Back Door Listings

The proposed changes set out above will be applied by ASX to both initial public offerings and back door listings.

ASX has, however, also introduced a policy of suspending companies undertaking a back door listing transaction from the date of announcement of the transaction (as opposed to the date of the shareholder meeting to consider the transaction). This change in policy took immediate effect and now applies to all back door listing transactions announced after 12 May 2016. This has been met with some opposition, as it is considered to make it more difficult to implement a back door listing, not least of all, because it is anticipated to make it more difficult to raise funds for the transaction as shares in the listed vehicle will not trade after the proposed transaction is announced.

Further, ASX proposes to now charge a AU\$10,000 fee (plus GST) in connection with its review of notices of meeting relating to back door listings.

ASX currently has an absolute discretion in deciding whether or not to admit an entity to the official list and to quote its securities. This includes both “front door” and “back door” listings. The discretion may be exercised even where an entity technically meets all of the specific conditions set out in the listing rules for listing and quotation. ASX has, in a revised Guidance Note 1, indicated it may exercise its discretion in a number of circumstances including where ASX is not satisfied that the applicant has an appropriate structure and operations for a listed entity, has had prior unacceptable dealings with the applicant or a director, promoter, broker, auditor, investigating accountant or professional adviser involved in the application, or ASIC or another corporate regulator has expressed concerns to ASX about the admission of the applicant to the official list.

Consultation

ASX is seeking submissions on the consultation by 24 June 2016. The consultation paper can be found on the ASX website. ASX has indicated that it currently anticipates that the proposed changes will take effect from 1 September 2016.

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