

Key Takeaways

- ASX will consider requests from listed entities undertaking a capital raising in conjunction with a re-compliance listing, to not apply the “20 cent rule”, allowing the issue price under the capital raising to be less than 20 cents per security (so long as the issue price is still no less than 2 cents per security). This will be particularly useful for small cap entities, seeking to undertake back door listings, that are trading at a share price which is materially less than 20 cents per share.
- Other procedural guidance has been provided for listed entities and their advisers to take into account when ASX exercises its discretion under ASX Listing Rule 11.1.3 to require that the listed entity re-comply with Chapters 1 and 2 of the ASX Listing Rules.

Background

On 30 September 2014, the Australian Securities Exchange (**ASX**) released an updated ASX Guidance Note 12 - Significant Changes to Activities (**GN12**).

GN12 details (among other things) the circumstances in which ASX will exercise its discretion, under ASX Listing Rule 11.1.3, to require an entity to re-comply with Chapters 1 and 2 of the ASX Listing Rules (as if the entity was applying for admission to the official list of ASX) as a result of undertaking a transaction that results in a significant change the “nature” or “scale” of the entity’s activities.

The revised GN12 follows a recent spike in the number of “back door listings” on the ASX. We consider the relaxed application on the “20 cent rule” will help to promote quality assets being vended into ASX listed entities, in a volatile equity market where traditional “front door” IPOs may struggle to be successful.

Relaxed “20 cent rule”

The 20 cent rule requires that an entity’s quoted securities be issued or sold for at least 20 cents per security (its options must also be exercisable for at least 20 cents in cash under the “minimum option exercise price rule”), where the entity undertakes a capital raising as part of, or in conjunction with, a transaction which results in the entity having to re-comply with the admission requirements of Chapters 1 and 2 of the ASX Listing Rules.

ASX has recognised that strict adherence to the 20 cent rule by small cap companies trading materially below 20 cents (which, practically, would require a consolidation of capital or other restructure as part of any re-compliance) imposes structural and timing impediments to such companies undertaking a significant transaction.

As a result, ASX will consider an application to waive the 20 cent rule in circumstances where:

- (a) the issue price or sale price for any securities being issued or sold as part of, or in conjunction with, the transaction:
 - (i) is not less than 2 cents each; and
 - (ii) is specifically approved by shareholders as part of the approval(s) obtained under ASX Listing Rule 11.1.2; and
- (b) ASX is otherwise satisfied the entity’s proposed post-transaction capital structure is appropriate.

ASX will take a similar approach to waiving the minimum option exercise price rule in respect of options over ordinary shares issued as part of, or in conjunction with, the relevant significant transaction.

ASX has indicated it may also consider granting waivers from the 20 cent rule in circumstances where a listed entity (that is unable to obtain the relief as described above) makes a genuine attempt to consolidate its securities to comply with the 20 cent rule but experiences a subsequent material drop in its share price below 20 cents prior to re-admission.

Other Procedural Guidance

ASX has provided various other procedural guidance relevant to the process of re-complying with Chapters 1 and 2 of the ASX Listing Rules, including ASX's view on discrete issues arising in respect of:

- the "minimum spread test"
- limitations on undertaking substantial pre-emptive capital raisings for a transaction or activity ahead of obtaining security holder approval or re-complying with Chapters 1 and 2 of the ASX Listing Rules
- escrow arrangements for securities issued under pre-emptive capital raisings
- the content requirements for meeting and re-quotation disclosure documents sent to shareholders in connection with obtaining approvals to undertake a significant transaction

While we do not consider this new procedural guidance issued by ASX is likely to significantly influence an entity's decision to undertake a transaction that may require the entity to re-comply with Chapters 1 and 2 of the ASX Listing Rules, entities and their advisers will need to ensure the revised GN12 is observed when undertaking the re-compliance process.

Further Information

The Squire Patton Boggs corporate team has considerable experience advising listed entities in relation to significant transactions (including back door listings) that require re-compliance with Chapters 1 and 2 of the ASX Listing Rules.

If you are considering undertaking a significant transaction or would simply like further information in relation to the revised GN12, please contact one of the individuals listed in this publication.

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