

CLOSING THE BACKDOOR? A GUARD AT THE FRONT DOOR? ASX ADMISSION REQUIREMENTS SET FOR AN OVERHAUL.

The ASX yesterday released its long anticipated consultation paper "*Updating ASX's admission requirements for listed entities*".

A number of amendments to tighten the admission requirements under the Listing Rules are proposed which may make it more difficult for early stage entities to access the market. In addition, some policy changes have immediate effect which will have material consequences for backdoor listings.

IMMEDIATE POLICY CHANGES

Announced a backdoor listing? No more trading until you relist

ASX has changed its backdoor listing policy. Trading in an entity's securities will now be suspended from the moment it announces a backdoor listing transaction until such time as it has re-complied with ASX's admission and quotation requirements. The move to an immediate suspension is intended to bring backdoor listings onto the same footing as front door listings, which can only trade when the entity seeking a listing has met ASX's admission and quotation requirements. The move is also designed to prevent what ASX has described as "potential mischief", with some listed shells completing pre-emptive capital raisings prior to the shareholder vote on a backdoor listing.

This policy change has taken immediate effect and applies to all backdoor listing transactions announced after 12 May 2016.

Requirement for a 20% free float - a hurdle for backdoor listings

ASX is proposing to introduce, as part of the amendments to the admission requirements, a minimum 20% free float requirement for both backdoor and front door listings. "Free float" is the percentage of the entity's main class of securities that are not:

- "restricted securities" (ie, securities which are subject to ASX escrow);
- securities subject to voluntary escrow; and
- securities held by "affiliated security holders", generally being persons who are a related party of the entity, or an associate of a related party, or other persons that ASX considers should be treated as affiliated.

The condition is introduced with immediate effect and will initially be implemented by ASX exercising its general discretion under Listing Rule 1.19. Currently, ASX guidance suggests that a 10% free float will generally be expected.

This will most significantly impact backdoor listings without a separate capital raising component, as the shares issued to vendors of the asset being acquired by the listed shell will be restricted securities, and will not count towards the free float.

TIGHTENING ADMISSION REQUIREMENTS, MAINTAINING THE QUALITY OF THE MARKET

The key message from the consultation paper is that ASX is seeking to "maintain the quality of the market".¹ The new backdoor listing requirements and proposed tightening of the admission rules are not the only measures being undertaken by ASX to support this objective.

In late April 2016 ASX introduced a formal pre-vetting procedure to the listing process. The pre-vetting is designed to identify, at an early stage, any issues which may result in ASX exercising its discretion to refuse admission to an entity that, in its opinion, is not appropriate to be listed on ASX.

The practical implications of this procedure are that, at a minimum, an entity seeking an ASX listing must:

- consult with ASX well ahead of any formal application to list; and
- provide to ASX information including the entity's structure and operations, business, and location of its business, credentials of its promoters and management, lead managers and brokers and its reasons for listing on ASX.²

An additional level of pre-vetting by the newly established Standards, Listings and Policy Committee will be required for "emerging or developing market" entities, and other entities with uncommon or novel attributes, which may include providing additional information to ASX on foreign due diligence conducted and legal opinions obtained to ensure the legality of the operations in these markets.

While ASX has made it clear that it supports early stage growth entities, time will tell if the tightening of the admission rules will have the desired effect of a more robust listed company base, or if early stage growth entities will be unable to access the ASX market to raise capital to fund growth.

Practical implications of the amendments

As a matter of course we always advise our clients who are looking to list on ASX to consult with ASX at an early stage. The proposed changes now mean that this early consultation is essential to give entities some certainty that they will be suitable for admission to the ASX. Also, given the additional potential stages of the pre-vetting process, time needs to be built into an IPO or backdoor listing timetable to cater for this.

Summary of the proposed amendments

The proposed amendments to the standard ASX listing requirements are:

	Current requirement	Proposal
Profit test	<p>The profit test requires that an entity:</p> <ol style="list-style-type: none"> 1. is a going concern that has had the same main business activity during the past 3 full financial years prior to admission; 2. has aggregated profit of at least \$1 million from continuing operations for the last 3 full financial years prior to admission; and 3. has consolidated profit from continuing operations of at least \$400,000 for the 12 months prior to admission. 	<p>Limb 3 to increase to \$500,000. Limbs 1 and 2 remain the same.</p>

An "emerging or developing market" entity is an entity that:

- is incorporated,
- has its main business operations, or
- has a majority of its board or a controlling resident,

in an emerging or developing market, being a developing country declared by the Minister for Foreign Affairs.

Over 100 countries have been declared as "developing countries" including the PRC, Indonesia and Malaysia.

¹ ASX Consultation Paper: *Updating ASX's admission requirements for listed entities* 12 May 2016

² ASX Compliance Update 21 April 2016

	Current requirement	Proposal
Assets test	The assets test requires entities other than investment entities to have: <ul style="list-style-type: none"> net tangible assets of at least \$3 million; or a market capitalisation of at least \$10 million. 	<ul style="list-style-type: none"> Minimum net tangible assets to increase to at least \$5 million. Minimum market capitalisation to increase to at least \$20 million.
Free float	There are no formal requirements for a minimum proportion of an entity's securities to be available at listing for investors to freely trade in the public market ("free float"), rather the ASX is currently exercising its discretion under Listing Rule 1.19 to require a minimum 20% free float.	Introduction of a minimum 20% free float requirement. "Free float" is the percentage of the entity's main class of securities that are not restricted securities or subject to voluntary escrow, and are held by "non-affiliated security holders", generally being persons who are not a related party of the entity, or an associate of a related party.
Spread	ASX's spread requirement can be met in one of the following ways: <ul style="list-style-type: none"> 400 security holders who hold a parcel of securities with a value of at least \$2,000; or 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 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%. 	Proposed to introduce new spread requirement: <ul style="list-style-type: none"> 200 security holders if the entity has a free float of less than \$50 million; or 100 securities holders if the entity has a free float of \$50 million or more, provided that each security holder must hold a parcel of securities with a value of at least \$5,000 .
Working capital	All entities admitted under the assets test must have at least \$1.5 million in working capital after taking into account any budgeted revenue for the first financial year after listing. For mining and oil and gas exploration entities, the \$1.5 million must be available after allowing for the first full year's budgeted administration and capital expenditure costs.	Minimum working capital will remain at \$1.5 million . However, the \$1.5 million will be calculated taking into account: <ul style="list-style-type: none"> the entity's budgeted revenue for the first full financial year that ends after listing; and the first full financial year's budgeted administration costs and the cost of acquiring any assets referred to in the disclosure document (to the extent these costs will be met out of working capital).
Audited accounts - assets test entities	Entities admitted under the assets test may provide unaudited accounts and provide accounts for a period shorter than 3 full financial years.	Entities admitted under the assets test will be required to provide: <ul style="list-style-type: none"> audited accounts for the past 3 full financial years; and the accounts for the last full financial year and if the accounts are more than 8 months old, audited or reviewed accounts for the last half year. In addition, entities admitted under the assets test will be required to provide 3 full financial years of audited accounts for any entity or business to be acquired at or ahead of listing. ASX will have discretion under the proposed new rule to accept less than 3 full financial years of audited accounts, but proposes to only exercise this discretion in circumstances where ASIC will accept less than 3 full financial years of audited accounts in a disclosure document.

Foreign exempt listings

ASX is also proposing to change the admission requirements for foreign exempt listings to:

- tighten the requirements to require that the home exchange of the entity is "acceptable to ASX" in addition to being a member of the World Federation of Exchanges; and
- broaden the requirements by introducing a minimum market capitalisation threshold test of \$2,000 million.

Submissions from the public

ASX is seeking submissions on the proposals canvassed in the consultation paper by 24 June 2016. We will make a submission to ASX on the proposals and we welcome any feedback.

KEY CONTACTS

For more information, please contact:



Catherine Merity

Partner

T +61 2 9286 8069

catherine.merity@dlapiper.com



Kelly Morrison

Senior Associate

T +61 7 3246 4126

kelly.morrison@dlapiper.com

Contact your nearest DLA Piper office:

BRISBANE

9/480 Queen Street
Brisbane QLD 4000
T +61 7 3246 4000
F +61 7 3246 4077
brisbane@dlapiper.com

CANBERRA

Level 3, 55 Wentworth Avenue
Kingston ACT 2604
T +61 2 6201 8787
F +61 2 6230 7848
canberra@dlapiper.com

MELBOURNE

Level 21, 140 William Street
Melbourne VIC 3000
T +61 3 9274 5000
F +61 3 9274 5111
melbourne@dlapiper.com

PERTH

Level 31, Central Park
152-158 St Georges Terrace
Perth WA 6000
T +61 8 6467 6000
F +61 8 6467 6001
perth@dlapiper.com

SYDNEY

Level 22, No.1 Martin Place
Sydney NSW 2000
T +61 2 9286 8000
F +61 2 9286 8007
sydney@dlapiper.com

www.dlapiper.com

DLA Piper is a global law firm operating through various separate and distinct legal entities.

For further information, please refer to www.dlapiper.com

Copyright © 2016 DLA Piper. All rights reserved.

This publication is intended as a first point of reference and should not be relied on as a substitute for professional advice. Specialist legal advice should always be sought in relation to any particular circumstances and no liability will be accepted for any losses incurred by those relying solely on this publication.