



20 July 2016

Ms Sarah Miller  
Chairman  
Listed Companies Association

By email: sarah@blackletterconsulting.co.nz

Dear Sarah

#### **COMPLIANCE ISSUES – ASX FOREIGN EXEMPT LISTED ISSUERS**

Thank you for your letter of 8 June 2016 addressed to James Posnett, raising a number of issues in relation to the ongoing compliance obligations of New Zealand entities admitted to the official list of ASX Limited (ASX) under the ASX Foreign Exempt Listing category.

Further to our teleconference on 24 June 2016, ASX has the following to add, adopting the numbering of your original letter.

1. Under listing rule 1.15.2, an entity admitted as an ASX Foreign Exempt Listing must immediately provide to ASX all the information that it provides to its overseas home exchange that is, or is to be, made public. As pointed out in your letter, this rule does not capture documents lodged by third parties fulfilling personal obligations such as directors and senior managers. Consequently, ASX does not expect a foreign exempt listing to also lodge the relevant interests of directors or senior managers with ASX.
2. ASX considers that that it is important for the market to be properly informed of matters relating to substantial holdings. To address this gap in drafting, ASX proposes to amend listing rule 1.15.1, such that an ASX Foreign Exempt Listing must also comply with listing rules 3.17.3 and 3.17.4.

This will require foreign entities to give to ASX a copy of a document it receives about a substantial holding of securities under any overseas law or provisions in the entity's constitution equivalent to Part 6C.1 of the Corporations Act (see proposed new rule 3.17.3), and if the entity is a foreign entity, a copy of a document it receives about a substantial holding of securities under any overseas law or provisions in the entity's constitution equivalent to Part 6C.2 of the Corporations Act that reveals materially different information to the most current information it has received (if any) about that substantial holding under the overseas law or provisions in the entity's constitution referred to in rule 3.17.3.

On 15 May 2016 ASX released a consultation paper including these proposed changes (available here <http://www.asx.com.au/regulation/public-consultations.htm> and directly at <http://www.asx.com.au/documents/rules/attachment-a-proposed-listing-rule-changes.pdf>).

For completeness, here is an extract showing the proposed amendments to the listing rules.

- 1.15 After it is admitted, an entity admitted as an ASX Foreign Exempt Listing must comply with the following listing rules (and need not comply with the others).

Introduced 01/07/96 Origin: Listing Rule 1B(4) Amended 30/09/01

- 1.15.1 Rules 2.2, 2.7, 3.17.3, 3.17.4, 8.2, 8.10, 8.15, 8.21, 12.6, 15.2 to 15.6, 15.8, 15.9, Chapters 16, 17, 18 and 19 and any listing rules that ASX specifies, either before or after it is admitted. If the entity's \*securities are \*CHES approved, it must also comply with listing rules 8.1, 8.3, 8.5, 8.6, 8.7, 8.11 and 8.17.

1.15.2 If the entity is a \*qualifying NZ entity, rule 2.4.

1.15.3 If the entity is a company and it is not a \*qualifying NZ entity, rule 12.6A.

1.15.4 If the entity is a trust and it is not a \*qualifying NZ entity, rule 12.6B.

Introduced 01/07/96 Origin: Listing Rule 1B(4) Amended 01/07/98, 01/09/99, 01/07/00, 24/10/05, 08/09/15, XX/XX/XX

Note: rules 15.2 to 15.6, 15.8, 15.9, and Chapters 16, 17, 18 and 19 are more in the nature of procedural rules.

ASX will have regard to the information given in the application about the regulatory regime to which the entity is subject and the entity's circumstances generally when deciding if additional rules should be specified.

Examples: If a significant proportion of an entity's management, business, operations, assets or derivation of revenue is in Australia, ASX may specify additional listing rules with a view to ensuring that the entity is treated similarly to an Australian entity.

If an entity's financial statements are prepared using accounting standards that ASX is not prepared to accept in place of Australian standards, or the disclosure regime of the overseas home exchange is not broadly similar to ASX's, ASX may specify additional rules.

## Documents sent to or received from security holders

3.17 An entity must immediately give ASX:

3.17.1 A copy of a document it sends to holders of \*securities generally or in a \*class.

Introduced 01/05/13

3.17.2 If the entity is an \*Australian entity, a copy of a document it receives about a substantial holding of \*securities under Part 6C.2 of the Corporations Act that reveals materially different information to the most current information (if any) it has received about that substantial holding under Part 6C.1 of the Corporations Act.

Introduced 01/05/13 Amended XX/XX/XX

Information that:

- a substantial holding differs (upwards or downwards) from a previously disclosed substantial holding by less than 1%; or
- the list of related entities that have a substantial holding has changed because of the creation, acquisition, dissolution or disposal of related entities,

is not considered materially different for the purposes of this rule.

3.17.3 If the entity is a \*foreign entity, a copy of a document it receives about a substantial holding of \*securities under any overseas law or provisions in the entity's constitution equivalent to Part 6C.1 of the Corporations Act.

Introduced 01/05/13 Amended 14/04/14 XX/XX/XX

Note: Where an entity is established in Australia, a person who gives a substantial holding notice to the entity under Part 6C.1 of the Corporations Act is required to give a copy of that notice to ASX (section 671B(1)) and therefore it is not necessary for the entity to give a copy of that notice to ASX.

3.17.4 If the entity is a \*foreign entity, a copy of a document it receives about a substantial holding of \*securities under any overseas law or provisions in the entity's constitution equivalent to Part 6C.2 of the Corporations Act that reveals materially different information to the most current information it has received (if any) about that substantial holding under the overseas law or provisions in the entity's constitution referred to in rule 3.17.3.

Introduced 01/05/13 Amended XX/XX/XX

Again, information that:

- a substantial holding differs (upwards or downwards) from a previously disclosed substantial holding by less than 1%; or
- the list of related entities that have a substantial holding has changed because of the creation, acquisition, dissolution or disposal of related entities,

is not considered materially different for the purposes of this rule.

Introduced 01/07/96 Origin: Listing Rules 3E(8)(b), 3E(8)(c), 3J(1)(a) Amended 01/05/13

Note: In some cases, an entity must give ASX a draft document (eg, a notice of meeting) in advance of it being sent out to holders of securities. See chapter 15.

Example: A company must give ASX a copy of a letter sent to shareholders. A trust must give ASX a copy of a document sent to holders of interests in the trust under section 1017D of the Corporations Act so far as that document relates to the circumstances of holders of interests generally, and not to the individual circumstances of a holder.

Cross reference: Chapter 14 deals with the requirements for meetings. Chapter 4 deals with accounts and related disclosure.

It is currently envisaged that these rules will come into effect on 19 December 2016. In the meantime, it is ASX's strong preference that companies lodge these documents with ASX as if the amended rules were in place, to ensure that this important information is provided to the market.

3. ASX confirms that Appendices 4D and 4E are not required to be lodged.
4. The statement required by listing rule 1.15.3 does not necessarily have to be a standalone announcement and can be combined for example with another document lodged as part of the entity's disclosure of its full year results.
5. ASX has required NZX-listed entities converting to a foreign exempt listing to also comply with listing rules 2.4 (requiring quotation to be sought for all securities in a class of securities quoted or to be quoted on ASX) and 2.7 (requiring an Appendix 3B to be lodged when quotation of additional securities is sought). This has also been picked up in the proposed changes to listing rules 1.15.1 and 1.15.2 which are extracted above in the response to 2.

An Appendix 3B only needs to be lodged when quotation is being sought for additional securities. An Appendix 3B does not need to be provided where shares are bought back. The lodgment of the requisite NZX filings with ASX will suffice.

In relation to your suggestion that it would be helpful to compile a "cheat sheet" of the ASX appendices to be complied with, ASX considers that the best place to make this information readily available is in Guidance Note 4 (Foreign Entities Listing on ASX). ASX will look to make the requirements clearer for entities with a primary listing on the NZX Main Board admitted under the ASX Foreign Exempt Listing category, in a future update of this guidance note.

New Zealand companies are required to apply to ASX for quotation of all securities regardless of whether they are admitted as an 'ASX Listing' or 'NZ Foreign Exempt Listing' (the current list is available at [www.asx.com.au/prices/new\\_zealand\\_based\\_companies.htm](http://www.asx.com.au/prices/new_zealand_based_companies.htm)) and so ASX listing fees are the same under both categories.

The NZ Foreign Exempt listing category differs from the general Foreign Exempt listing category as:

- NZ companies have the same class of securities quoted, traded, cleared and settled on ASX and NZX, whereas general Foreign Exempt companies are required to use CHES Depositary Interests (CDIs).
- Securities are fully fungible between the ASX and NZX markets.
- NZ companies under the Foreign Exempt category are, in every practical sense, regarded by the market as being fully listed.

Thank you for raising these issues with ASX and making yourself available to discuss them. ASX is always very interested to know what our NZX-listed companies are thinking and looks forward continuing to work co-operatively with the Listed Companies Association and our NZX-listed companies.

If you have any further enquiries in relation to this letter, please do not hesitate to contact me.

Yours sincerely

*[Sent electronically without signature]*

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