

# Listing rule waivers

## INTRODUCTION

This practice note is designed to assist entities and their advisers in understanding how the NSX deals with listing matters, including the policies and procedures that are adopted in dealing with listing applications and the granting of Listing Rule Waivers.

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### Practice Note History

First Issued.....4 March 2002  
 Revised..... 6 Feb 2007

### Qualifications

National Stock Exchange of Australia Limited (NSX) issues practice notes to promote commercial certainty, reduce costs to business and assist market participants. We are available to discuss any questions you have in relation to a practice note. NSX may replace practice notes at any time. Issuers should contact NSX to ensure that they have the latest version of a practice note. As a practice note is only a guide to NSX practice, issuers are advised to contact NSX to discuss their particular circumstances and the application of the listing rules. NSX cannot give legal advice to issuers and recommends that they consider taking advice from a qualified professional person.



## Decision Making Process

Questions concerning Listing Applications, waivers, quotation of additional securities, trading halts, suspensions, reinstatements and removals should be addressed to either the Companies Manager or General Manager.

Waiver applications should be addressed to the Chairman, Compliance Committee. The NSX Companies Manager or General Manager verifies the application and discusses any discrepancies with the applicant. Once the waiver application is all in order it is presented to the NSX Compliance Committee.

The NSX Compliance Committee will discuss the waiver application, seek more information about the waiver application, grant Waivers requested as part of the application, grant additional Waivers if required and entertain presentations by the entity to further explain their application.

In some instances a waiver may not be necessary, but that approval of a use of a rule is required.

The Compliance Committee will meet within 48 hours of the General Manager alerting the Committee of a new waiver application or as soon as practical thereafter.

The applicant will be formally notified by the General Manager as to the approval of its waiver application.

## Listing Rule Waivers

The NSX has the power to waive listing rules on application.

Submission materials for NSX consideration

In order for a matter or proposal to be considered materials in support of the matter or proposal need to be provided to the Compliance Committee in advance so that they can be reviewed and a recommendation prepared. If a decision is required within a certain timeframe, the entity should consult with the General Manager, NSX that the Compliance Committee will have sufficient time to consider the matter and prepare a recommendation.

In preparing a waiver application, it should be remembered that the onus is on the entity to establish that there is sufficient commercial and policy justification to waive a listing rule and that a waiver of the rule will not have adverse policy implications.

## 'In principle' advice

In appropriate cases, for example where there is an unusual structure of an applicant entity or significant waiver of the rules may be required, NSX may be prepared to give 'in principle' advice on the position it is likely to take on a matter. The entity should consult with the General Manager, NSX in the first instance about the need for in principle advice from the Compliance Committee or a formal waiver application..

## Quotation of additional securities

Application must be made to the NSX for the quotation of additional securities and lodged as a company announcement on the required form. The NSX may refuse to list additional securities or refuse a waiver in support of additional securities where it has been determined that the quotation of those securities would not produce a fair, orderly or transparent market.

## Suspensions and reinstatements to quotation

Decisions about suspensions and reinstatements to quotation are made as required. These decisions can usually be made by the Manager Companies of the home branch of the listed entity, without the need to discuss the matter at a Management meeting.

## Appeals Process

An entity that is refused an application has the right to Appeal. All appeals must be presented to the NSX Compliance Committee via the General Manager, NSX. The NSX Compliance Committee hears appeals from an entity on various listings decisions that affect it. The decisions on which an appeal is available to an entity will include:

1. Refusal to admit that entity to the official list, or the conditions of admission.
2. Refusal to quote the securities of that entity, or the conditions of quotation.
3. Refusal to grant a waiver to that entity, or the conditions of a waiver.
4. The application of the Listing Rules to that entity (except in relation to a suspension).
5. Removal of that entity from the official list.

Appeals must be made in writing, by the entity only, within 14 days of the decision being received by the entity. The submission can include submissions from related third parties. The Compliance Committee reviews the newly provided information as a complete review and a new determination is given. The Compliance Committee does not review if the previous decision was incorrect or not.

The timing of meetings and submissions will vary in a particular case.

Where an entity fails to lodge any written submissions in support of the appeal, or fails to advise the NSX that it does not propose to make any written submissions within the timeframe stipulated in the letter sent to the entity by the NSX the appeal will be treated as being withdrawn.

Committee members are to be provided with a list of associated parties prior to an appeal being heard and are asked to advise of any conflicts. If a Committee member has a conflict of interest, then that member will not sit on the Committee that hears the appeal unless the interest is disclosed and both NSX and the entity consent. If a Committee member discovers that they have a conflict of interest while in attendance at the appeal, that Committee member will withdraw from the appeal hearing and will not participate in the deliberations unless both NSX and the entity consent to the member's continuing participation. As a matter of policy, NSX does not provide details of Committee members. This is in order to ensure impartiality.

The Compliance Committee may request the presence of representatives from the entity as they deem appropriate.

## Publication of waivers register

To maintain transparency of all waivers given, a register is maintained of each waiver which includes the following information:

1. Listing Rule
2. Listing Rule Section Number
3. Description of Listing Rule Affected
4. Description of Waiver Requested
5. Effect on Listing Rule of Waiver
6. Which Entity Requested the Waiver
7. Which Securities are affected by the waiver
8. Date Waiver was requested
9. Date Waiver was approved by the Listing Committee

The Register of Waivers is published on the NSX Website at the following location: <http://www.nsx.com.au>.

## Further Information

Please contact General Manager, National Stock Exchange of Australia Limited, PO BOX 283 Newcastle NSW 2300

## Appendix 1:

### Initial information required as part of Waiver request

<b>Applicant Name and contact details</b>	
<b>Issuer</b>	
<b>Security Codes this waiver applies to</b>	
<b>Affected Listing Rule Number(s)</b>	
<b>Description of Listing Rule(s)</b>	
<b>Description of actual Waiver Requested</b>	
<b>Possible effects on the rules and practice if the waiver is granted.</b>	