



ASIC

Australian Securities & Investments Commission

REPORT 480

Assessment of ASX Limited's listing standards for equities

June 2016

About this report

This report presents the findings of our assessment of ASX Limited (ASX)'s listing standards. It also highlights a number of good practices we have observed, which may assist all Australian listing markets (and those considering a listing function) to ensure their listing standards continue to support fair, orderly and transparent markets.

About ASIC regulatory documents

In administering legislation ASIC issues the following types of regulatory documents.

Consultation papers: seek feedback from stakeholders on matters ASIC is considering, such as proposed relief or proposed regulatory guidance.

Regulatory guides: give guidance to regulated entities by:

- explaining when and how ASIC will exercise specific powers under legislation (primarily the Corporations Act)
- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (e.g. describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

Information sheets: provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

Reports: describe ASIC compliance or relief activity or the results of a research project.

Disclaimer

This report does not constitute legal advice. We encourage you to seek your own professional advice to find out how the Corporations Act and other applicable laws apply to you, as it is your responsibility to determine your obligations.

Examples in this report are purely for illustration; they are not exhaustive and are not intended to impose or imply particular rules or requirements.

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Executive summary

Background

- 1 Listings standards are critical to the integrity of the Australian equities market,¹ and the trust and confidence investors have in it. As the listings venue for the vast majority of listed entities in Australia, ASX has a critical role to play.
- 2 In this report, the term 'listing standards' refers to:
 - (a) the listing rules—the rules implemented by the operator of a listing market, such as ASX, that deal with a listed entity's admission and post-admission obligations; and
 - (b) the administration of the listing rules—the approach and operating model adopted by the market operator to monitor and enforce those rules. This includes the judgement and discretion exercised in the course of day-to-day oversight.
- 3 As a licensed market operator, ASX is required to administer its listing standards, and the trading platform on which ASX listed-equities are traded, in accordance with its statutory obligations. ASX has historically met these obligations, and its listing standards have largely served this market well.
- 4 Financial markets are, however, undergoing significant changes both here and overseas which raise important considerations for traditional approaches to listing rules and their administration in Australia. These changes are being driven by ongoing developments in:
 - (a) globalisation (see paragraphs 42–48);
 - (b) business cycles across important sectors (see paragraphs 49–60);
 - (c) competition (see paragraphs 61–73); and
 - (d) technology and information management (see paragraphs 74–83).
- 5 Because of the importance of ASX listing standards to the confidence of investors in the Australian equities market, we consider it essential the listing rules and their administration continue to be fit for purpose. For this reason, we have chosen to assess the extent to which ASX has met its obligations in this area of its business.

¹ ASX listing rules and standards also apply to managed investment schemes and debt issuers listed on ASX. In this assessment we have focused on the application of ASX listing standards to issuers of equities: see paragraph 10.

Purpose of this report

- 6 This report has drawn on materials, analysis and research from the period 1 July 2013 to 30 November 2015 (the assessment period) and subsequent discussions with ASX on a range of related matters.
- 7 The purpose of this report is to assess the extent to which ASX has met its obligations to:
- (a) operate a listing market that, to the extent reasonably practicable, is fair, orderly and transparent (s792A(a) of the *Corporations Act 2001* (Corporations Act));
 - (b) have adequate arrangements to monitor and enforce compliance with its listing rules (s792A(c)); and
 - (c) have sufficient resources (including financial, technological and human resources) to properly operate its listing market (s792A(d)) (see Section A).

Our findings

- 8 We have concluded that, during the assessment period and up to this point in time, ASX has met these statutory obligations: see paragraphs 36–40. In recognition of important developments taking place in financial markets here and overseas, ASX has recently undertaken a range of initiatives designed to ensure its listing standards continue to be fit for purpose: see Table 2.

Methodology

- 9 In reaching the conclusion that ASX has met its statutory obligations, we engaged extensively with ASX and regulators in other jurisdictions. Our engagement with ASX was driven by our own frontline surveillance of the secondary trading of ASX-listed equities, as well as our ongoing oversight of ASX and the operation of its listing market: see paragraphs 37–39.

Scope of the assessment

- 10 The focus of this assessment was ASX listing standards for equities. However, a wide range of products other than equities are available for trading by investors on ASX and other authorised markets in Australia. These include warrants, exchange-traded funds, managed funds, hedge funds, futures, options, interest rate derivatives, foreign exchange spot and derivative products, and bonds. In an open market such as Australia, other products will also naturally emerge over time.

Investors should ensure they understand their investments

- 11 This assessment did not address this wider suite of products. Each of these has a set of admission and ongoing standards imposed by the relevant market operator. Investors should take active steps to fully understand their investment decisions before they make them. The importance of effective listing standards (and other features of a robust regulatory framework) should not be viewed by investors as a substitute for careful consideration of investment choices.

Good practice principles

- 12 In Section C we set out a number of good practices that we have observed and which we consider will assist all Australian listing markets—and those considering a listing function—to ensure their listing standards continue to support fair, orderly and transparent markets.

A Listing standards

Key points

ASX is responsible for the listing standards of 99.9% (by market capitalisation) and 96.2% (by number) of entities whose equities are listed in Australia. Its listing standards are, therefore, essential to providing:

- investors with an environment to pursue opportunities to grow their wealth; and
- issuers with access to those investors to fund innovation and expand their business.

We consider that, over the assessment period and up to this point in time, ASX has met its obligations as a licensed market operator in respect of its listing standards.

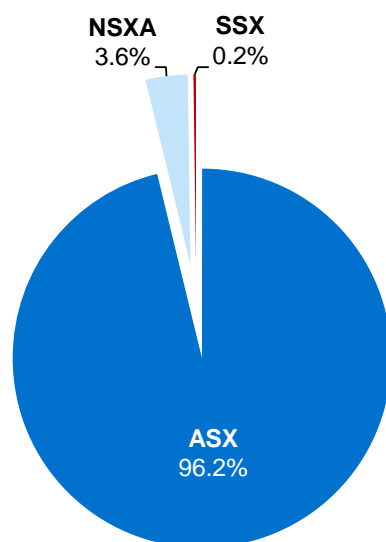
Role of listing standards in financial markets

- 13 Effective listing standards play an important role in supporting financial markets to fund growth and innovation and, in turn, promote individual wealth and national prosperity.
- 14 Listing standards have a particular role in delivering these benefits to those:
- (a) seeking to raise capital to expand their business; and
 - (b) looking to invest that capital and generate a return.
- 15 Listing standards are the filter through which a market operator considers whether an entity is appropriately qualified to access capital through that public market. In making this decision, the market operator takes into consideration a range of matters about the entity, including its quality, size and the nature of its operations.
- 16 As a condition of accepting the benefits of being listed, an entity commits to a range of ongoing obligations designed to support the trust and confidence of those who have invested in it, and the market at large.
- 17 Market operators have an essential role to play by:
- (a) actively and robustly administering the qualification process for listing; and
 - (b) ensuring listed entities meet their ongoing obligations to investors under the listing rules.
- 18 Among other things, this helps reduce the risk premium investors require to invest in Australian businesses, making these businesses more efficient in the longer term and Australians more prosperous.

Role of ASX listing standards in Australian financial markets

19 As the operator of the listing function for the majority of listed entities in Australia (99.9% by market capitalisation and 96.2% by number), ASX has a critical role to play: see Figure 1.

Figure 1: Number of listed entities in Australia by market (as at 31 March 2016)*



* As at 31 March 2016, SIM VSE had no equity listings.

20 A decision by ASX to list an entity is an essential pre-condition to the entity being able to access capital through the ASX market. In return, listed entities are subject to requirements designed to support investor trust and confidence which exceed those required of unlisted entities.

21 These include, for example, requirements to:

- (a) share important information with the market in a complete and timely manner;
- (b) issue and maintain securities with rights that are fair to new and existing shareholders;
- (c) demonstrate the maturity and effectiveness of their governance standards;
- (d) maintain practices for meetings and other communications with shareholders designed to facilitate constructive and substantive engagement; and
- (e) engage with shareholders on important decisions affecting the listed entity and transactions involving persons in positions of influence.

22 As long as ASX permits the equity securities of these entities to remain quoted, they also continue to enjoy a variety of ongoing benefits—including the ability to access a range of options to more easily raise further capital. An entity may only take these benefits if ASX has permitted it to have been

continuously quoted on its market—with the effect that the entity has, at all relevant times, been subject to ASX's monitoring and enforcement of the listing rules, including disclosure: s713, 708AA, 708A and Class Order [\[CO 09/425\]](#) *Share and interest purchase plans*.

- 23 For as long as ASX permits the equities of those entities to be listed, investors are also able to more easily manage their risks by trading those equities on secondary trading venues. For the quarter ending 30 March 2016, the average daily number of on-order book trades in ASX-listed equities was 1,110,291, with an average daily value of \$3.6 billion.² These trades take place on both ASX and the market operated by Chi-X Australia Pty Ltd. Among other things, the listing rules are designed to ensure that subsequent trading by investors can occur on an informed basis.

Source of investment for Australian household and retirement savings

- 24 The importance of robust listing standards for Australian investors is underscored by the fact Australians have one of the highest levels of equities ownership in the world.³ For example:
- (a) in October 2014, around 36% of all Australian adults (almost 6.5 million Australians)⁴ owned listed investment products, of which equities made up a significant proportion;
 - (b) approximately 23.5% of superannuation fund investments (funds with more than four members) are held in Australian-listed equities, equating to \$317.2 billion of the \$1.4 trillion in superannuation investments;⁵ and
 - (c) approximately 30% of self-managed superannuation fund investments are held in Australian-listed equities, equating to \$178.4 billion of a total \$594.6 billion.⁶

Foreign investment in Australia

- 25 There are a range of reasons foreign investors also choose to invest in the Australian equities market. One reason is the reputation the Australian market has globally for its trusted, robust and transparent regulatory environment. The ASX listing standards are a critical feature of this framework.
- 26 As of December 2015, foreign investors were responsible for approximately 44.6%⁷ (up from 35.3% in December 2005) of all investment in our equity market. This reflects both:

² [Equity market data for quarter ending March 2016](#) is available on our website.

³ ASX, [The Australian share ownership study \(PDF 1.2 MB\)](#), 2014.

⁴ ASX, [The Australian share ownership study \(PDF 1.2 MB\)](#), 2014.

⁵ Australian Prudential Regulation Authority, [Quarterly Superannuation Performance—March 2016](#), p 13.

⁶ Australian Taxation Office, [Self-managed super fund statistical report—December 2015](#), quarterly report.

⁷ Australian Bureau of Statistics (ABS), [5232.0—Australian National Accounts: Finance and Wealth](#), Table 47.

- (a) the global nature of investors in our markets and the confidence that foreign investors have in it; and
- (b) the importance of foreign capital to the current and future growth and development of the Australian economy.

27 It is essential that the ASX listing standards continue to underpin the trust and confidence foreign investors have in the Australian equities market.

Source of funding for Australian businesses

28 The ASX listing standards are also a critical feature of the framework that enables Australian businesses to access funding, with equity capital being a major source of funding.

29 For the financial year ending 30 June 2015, more than \$50 billion in equity capital was raised by entities listed on ASX. This figure equates to approximately 3% of national GDP.⁸

30 The important role played by the ASX listing standards in supporting access to equity funding can also be seen in an international context: see Table 1. Compared to a sample of other major international exchanges, ASX ranks:

- (a) fifth in terms of the number of listed entities (only around 200 fewer than the New York Stock Exchange (NYSE) or the London Stock Exchange (LSE)); and
- (b) first in terms of providing access to capital for smaller businesses (based on ASX having the smallest average market capitalisation per listed entity of all the exchanges, see Table 1).

Table 1: Major global listing exchanges

Exchange	Total market cap (USD million)	No. of entities	Avg market cap (USD million)
ASX	1,070,000	2,196	487 ⁹
NASDAQ	8,800,000	3,600	2,444
NYSE	27,000,000	2,410	11,203
LSE*	3,493,000	2,382	1,466
Shanghai Stock Exchange (SSE)	4,779,000	1,062	4,500
Singapore Exchange Limited	656,000	769	853

⁸ ABS, [1345.0—Key Economic Indicators, 2016](#).

⁹ The extent to which ASX has enabled small business to access capital is further emphasised by the fact that its market capitalisation is dominated by the largest 100 entities—with the remaining 2,100 entities (95%) responsible for only 20% of total ASX market capitalisation.

Exchange	Total market cap (USD million)	No. of entities	Avg market cap (USD million)
Hong Kong Securities Exchange (HKEX)	3,236,000	1,830	1,768
Toronto Stock Exchange (TSX)	1,773,000	3,505	506

* Including the Alternative Investment Market (AIM) for smaller, growing entities.

Assessment of ASX listing standards

- 31 The administration by ASX of its listing standards, and the approach it has adopted over the past 10 to 15 years, has largely served Australian businesses and investors well. Changes made by ASX to rules and guidance over that time have generally been effective in consolidating, clarifying and, where relevant, tightening expectations on matters of governance and disclosure—while at the same time supporting businesses to readily access capital.
- 32 Financial markets are, however, undergoing significant changes both here and overseas. These changes raise important considerations for ASX and its traditional approach to listing standards: see paragraph 4 and Section B.
- 33 ASX's express position is that the ASX listing rules are to be interpreted:
- (a) in accordance with their spirit, intention and purpose;
 - (b) by looking beyond form to substance; and
 - (c) in a way that best promotes the principles on which they are based.¹⁰
- 34 For this reason, it is expected that important developments in financial markets here and overseas would prompt ASX to evaluate the extent to which its listing standards continue to be fit for purpose.
- 35 In keeping with this expectation, ASX has recently undertaken a number of initiatives, the more important of which are set out in Table 2. A more detailed discussion of various market developments is set out in Section B.

Assessment findings

- 36 ASIC's conclusion is that, during the assessment period and up to this point in time, ASX has met its statutory obligations to:
- (a) operate a listing market that, to the extent reasonably practicable, is fair, orderly and transparent (s792A(a));
 - (b) have adequate arrangements to monitor and enforce compliance with the listing rules (s792A(c)); and

¹⁰ As set out in the [introduction to the ASX Listing Rules \(PDF 28 KB\)](#).

- (c) to have sufficient resources (including financial, technological and human resources) to properly operate the listing market (s792A(d)).
- 37 In forming this view, we looked at the following features of ASX's listing standards:
- (a) ASX's commercial and regulatory strategy for its listing functions;
 - (b) ASX's relevant governance and internal structure;
 - (c) ASX's resourcing of its listing standards;
 - (d) ASX's culture and approach to its listing standards; and
 - (e) ASX's listing rules and the extent to which they remain fit for purpose.
- 38 In selecting and reviewing these features, we were informed by our own surveillance of ASX's equities market and our ongoing oversight of ASX and its surveillance practices. We also engaged extensively with ASX and regulators in other jurisdictions.
- 39 Our engagement with ASX included:
- (a) extensive review of ASX's internal working, policy and management documents;
 - (b) review and analysis of specific case studies of ASX's interaction with listed entities on admission, disclosure and compliance matters; and
 - (c) interviews with ASX compliance, business development and management staff involved in all aspects of ASX's listing standards.
- 40 We also engaged extensively with international regulators in the United Kingdom, United States, Canada, Singapore, Hong Kong and New Zealand. This engagement included comparative analysis of:
- (a) the governance, structure and roles of each relevant market's listing function;
 - (b) the terms and nature of the listing standards in each market; and
 - (c) international listing trends, including how they are affecting other major listing market operators and how those markets are responding.
- 41 In response to some of these trends—and to ensure its listing standards remain fit for purpose—ASX has recently undertaken a number of initiatives: see Table 2.

Table 2: Initiatives undertaken by ASX

Refocused resourcing	ASX has taken steps to bring in additional resourcing to support the ASX listing standards and internal assurance functions to ensure internal decision making is robust and rigorously tested.
Quantitative and trend analysis	<p>ASX has undertaken detailed quantitative and trend analysis to identify developing risk areas and additional resourcing needs in the changing environment.</p> <p>This analysis also has the potential to support consideration of:</p> <ul style="list-style-type: none"> • re-allocation of current resources to ensure effective alignment with evolving and future 'hot spots'; and • the possible need for additional skill sets to operate in the context of developing market trends.
International scan	ASX has undertaken a scan of the international listings landscape to identify regulatory initiatives and challenges faced by major listing markets in other jurisdictions, with a view to early identification of any risks or concerns that may emerge in Australia.
ASX admissions pre-vetting process	ASX has implemented processes to allow early engagement with entities seeking listing on ASX to enable ASX to assess, at an early stage, whether the entity is likely to meet ASX's listing standards.
ASX listing governance structure	To provide clearer direction and oversight of ASX listing standards (in particular, ASX's discretion to refuse to list an entity), ASX has made changes to the listing governance structure, including changes to oversight of listing decisions, data and trend analysis, and early risk identification. ASX has also removed appeal rights for decisions made under the ASX listing rules.
Acceptable listed corporate structures	ASX worked with ASIC, alongside other listing markets in Australia, to agree to a moratorium on further listing of entities that have adopted a variable interest entity structure: see ASIC Market Integrity Update, Issue 65 , October 2015.
Referral process	ASX has refined its existing referral process to ASIC for any suspected breaches by an entity of the ASX listing rules or Corporations Act.
Complaints handling process	ASX has updated its arrangements to enhance processes for dealing with the management of complaints made about listed entities. This is designed to ensure the processes continue to be fit for purpose and deal with matters efficiently and effectively.
Review of listing admission rules	<p>ASX has undertaken a review of its rules and guidance on admission to listing to ensure they remain fit for purpose in the changing market environment.¹¹</p> <p>The proposed changes were released for public consultation on 12 May 2016.</p>
Annual review of issues and trends	Recognising the pace of change in financial markets, ASX is conducting an annual review of issues and trends in listing and participant compliance.

¹¹ Some features of the existing rules, including some that require certain financial thresholds to be met, have been in place for more than 20 years.

B Developments in financial markets affecting ASX listing standards

Key points

There are a number of important and ongoing developments in financial markets here and overseas. These developments raise important considerations for traditional approaches to ASX listing standards, and underscore the importance of taking a forward-looking and proactive approach to ensuring listing standards remain effective and fit for purpose.

Globalisation

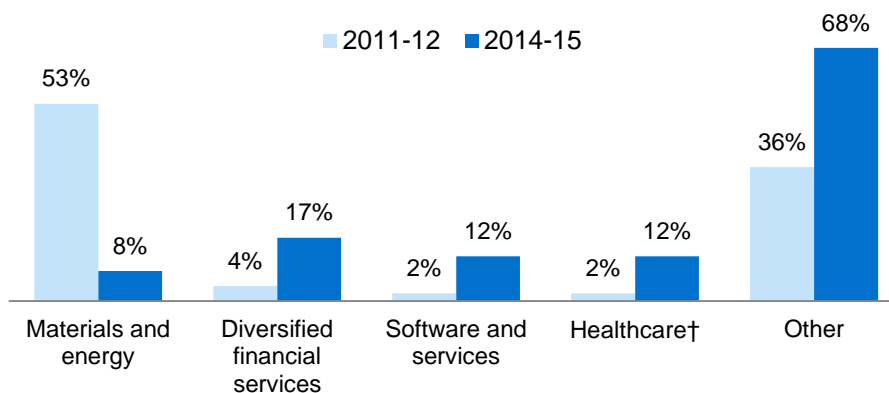
- 42 ASX-listed entities have traditionally been dominated by entities predominantly based in Australia. However, there has been a growing trend in entities with very little connection to Australia seeking and obtaining listing. Of these, there has been a particular trend in entities from emerging markets. Each year for the past few years, at least 10–15% of initial public offerings (IPOs) on ASX have been by entities of this type.
- 43 One view is that this has the potential to enable Australian investors to more readily diversify their investment portfolios. It is important to recognise that, for example, a prominent feature of a number of vibrant overseas markets (e.g. NYSE and LSE) is the geographical diversity of the entities listed on those markets.
- 44 Cross-border activity and integration with international markets can, and does, deliver enormous economic benefits to Australia. At the same time, it is important that entities seeking to list on licensed public markets in Australia continue to be suitable for doing so.
- 45 If an individual entity is admitted to listing when it may not be suitable, there could be damaging consequences for the investors in that entity. However, if a drop in listing standards becomes more widespread:
- (a) it may compromise the perceived quality of entities that have already 'earned' listing under the ASX listing standards; and
 - (b) it risks the reputation of, and confidence in, the Australian financial market more broadly.
- 46 If a systemic drop in listing standards undermines the trust and confidence investors have in the Australian equities market, the potential consequences could be severe and long term.

- 47 In August 2013 we released [Report 368](#) *Emerging market issuers* (REP 368). REP 368 identified a number of challenges that regulators and market operators were more likely to encounter when dealing with emerging market issuers, than when dealing with entities operating wholly in Australia. These included:
- challenges in accessing or verifying reliable information about the entity's operation and performance;
 - an absence of clarity on corporate governance and management systems;
 - uncertainty about the genuine nature of the entity's interest in accessing the Australian equity market;
 - complex and unfamiliar ownership or contractual arrangements that underpin the entity's operations; or
 - a lack of understanding by the entity's officers of the ASX listing rules and broader Australian regulatory framework.
- 48 The trend in emerging market issuers listing on ASX has continued since the publication of Report 368. This has placed pressure on ASX's historical approach to listing standards, including the effectiveness of parts of the listing rules and the resources required to administer them.

Changing business cycle

- 49 Over recent years there has been a marked shift in the sectors of entities listing on ASX. Historically, a large proportion of new listings were from the materials and energy sector, making up over 60% of new listings in 2007, but only 10% of IPOs in 2014–15. That trend can be seen in more recent data from the 2011–12 and 2014–15 financial years: see Figure 2.

Figure 2: IPOs by industry sector*



* Industry sectors are classified using the Global Industry Classification Standards.

† Includes healthcare, pharmaceuticals, biotechnology and life sciences.

- 50 The materials and energy sector of the Australian economy is clearly in transition—giving rise to a number of important considerations for ASX regarding its approach to listing standards and the application and allocation of relevant resources.
- 51 The application of the ASX listing rules to the materials and energy sector is well-established and supported by widely understood industry standards (e.g. The Australasian Code for Reporting of Exploration Results, Mineral Resources and Ore Reserves ('the JORC Code'))¹² which underpin accepted disclosure practices and informed investment decisions.
- 52 As the trend in entities seeking to list on ASX moves towards the technology, healthcare and diversified financial services industries, it does so:
- (a) without the support of these established frameworks; and
 - (b) arguably, without the technical expertise ASX staff have acquired over time in monitoring and enforcing disclosure and other listing rule requirements of more traditional sectors.
- 53 In light of these developments, it is prudent for ASX to consider the extent to which traditional approaches and resources (including skill-sets) used to monitor and enforce the listing rules continue to be fit for purpose. For example, this could include consideration of additional skills and systems to identify and monitor emerging or potential risks, to best position ASX to deal with them before they crystallise in a material way.
- 54 One consequence of the shifting business cycle has been the pressure it has put on a range of listed entities at the smaller end of the market. This has contributed to, among other things, a significant increase in backdoor listings.¹³ ASX analysis indicates that between the 2013–14 and 2014–15 financial years, there was a 164% increase in backdoor listings on ASX. This trend is almost certain to continue.¹⁴
- 55 One of the challenges faced by ASX is ensuring its listing standards are met in an environment where backdoor listings are often undertaken by financially challenged entities anxious to find a new business model at the lowest cost.
- 56 Changes to the business cycle have also coincided with ASX's consideration of whether parts of the listing rules continue to be fit for purpose. For example, the ASX listing rules provide several avenues an entity may take to

¹² The JORC Code is a professional code of practice that sets minimum standards for public reporting of minerals exploration results, mineral resources and ore reserves.

¹³ 'Backdoor listing' refers to a process where someone seeking to have an undertaking listed does so by injecting the undertaking into an existing listed entity rather than the more conventional process of applying to be admitted to the official list under ASX Listing Rule 1.1 (a 'frontdoor listing'). A backdoor listing can take a number of forms, these are outlined in [ASX Guidance Note 12 Significant changes to activities](#) (GN 12).

¹⁴ Around one-third of those listings were undertaken by mining entities that used the backdoor listing process to re-emerge as technology entities.

be admitted to listing. Many of these have been in place for a number of years (some for over twenty years).

- 57 The 'assets test' is one of the avenues an entity can take—and was designed for the admission of start-ups. The nature of the Australian economy over recent years has meant that a number of these start-ups have been mining and resources entities. Unlike the 'profits test', the assets test does not require the listed entity to demonstrate a profit history or have audited accounts. Historically, ASX has used this test to admit around 75% of all listed entities.
- 58 Recent ASX analysis highlights the number of serious compliance issues associated with entities admitted under the assets test compared to those admitted under other tests. In some respects, this is to be expected because of the significantly higher number of entities admitted under this test than others.
- 59 Regardless, changes in the business cycle have coincided with ASX's consideration of the need to require accounts to be audited for all listed entities, irrespective of the admission test the entity uses. This and other considerations about the appropriateness of admission criteria were [released by ASX for public consultation on 12 May 2016](#).
- 60 Other major exchanges are, for similar reasons, also considering their own historical approaches to the admission of listed entities.¹⁵

Competitive pressures on listing standards

- 61 ASX also recognises the potential for competitive forces to disrupt its historical approach to listing standards. These forces are driven by:
- (a) competition between listing markets (see paragraphs 62–66); and
 - (b) competition between listing markets and alternative capital raising models (see paragraphs 67–73).

Competition between ASX and other markets

- 62 While the number of listed entities on ASX has increased steadily for a number of years, this has not been the case for other important markets outside the Asia–Pacific region. For example, the number of listings on the LSE (including AIM) has declined by 16% over the past decade. The decline in the United States has been even steeper.
- 63 To stem this decline and otherwise support its listing business, LSE and other markets such as NYSE and HKEX have been successful in attracting foreign listings. While the success of other markets in attracting entities from

¹⁵ See, for example, HKEX, [HKEX guidance letter: Guidance on IPO vetting and suitability for listing \(PDF 89 KB\)](#), HKEX-GL68-13A, June 2016.

Australia has been limited to date, the recent listing by Atlassian Corporation PLC on NASDAQ is an important example of this competitive dynamic.

- 64 At the same time, active efforts by ASX to attract the 'right' foreign entities to list on its market is a natural response to ASX's place in a global business environment. It is also an inevitable and perhaps increasingly pressing consideration for ASX, as the transition continues away from more 'local' industries that have traditionally supported the ASX listings pipeline.
- 65 In either case, there is a risk that over time competitive tension may put pressure on ASX to lower its existing listing standards in order to:
- (a) retain entities that might otherwise be drawn away to overseas listing markets; and/or
 - (b) attract entities to the Australian market.
- 66 The International Organization of Securities Commissions (IOSCO) has previously publicly reported on risks of this type.¹⁶ ASX recognises the need for these concerns to be effectively managed.

Competition between ASX and alternative capital-raising models

- 67 In addition to pressures on ASX listing standards that arise from competition between listing markets, alternative capital-raising models also have the potential to raise similar competitive tensions. These alternative models are being driven globally by increased access to technology and, in some cases, government policy.
- 68 The final form of the Australian model for crowd-sourced equity funding is yet to be finalised. Government's consultation paper [*Facilitating crowd-sourced equity funding and reducing compliance costs for small businesses*](#), released in August 2015, sought feedback on proposals to allow public companies that are issuing equity through crowd-sourced equity funding to do so with reduced corporate governance and reporting obligations compared to the requirements under a full public equity fundraising.
- 69 As proposed in the consultation paper, these arrangements would be available to companies with consolidated annual revenue and gross assets of less than \$5 million and would enable them to raise up to \$5 million in any 12-month period.

¹⁶ In its report, [*Regulatory issues arising from exchange evolution \(PDF 191 KB\)*](#) (final report, November 2006), IOSCO identified the risk that a market might lower listing standards to attract new listings and generate additional revenue: '...the potential impact of competitive pressures are: (a) that an exchange may reduce the resources it devotes to regulation, and (b) worse that they may place insufficient value on the regulatory process, fail to sustain a strong regulatory culture and be less willing to co-operate with their supervisory authorities'.

- 70 The intention of this initiative is to provide additional ways to finance innovative business ideas and to reduce the cost to small business of accessing capital. In doing so, if the proposals are adopted, it may also present a genuine alternative to the traditional model of accessing capital through ASX. This may have particular relevance in Australia because:
- (a) there is a uniquely high number of small entities listed on ASX (i.e. around 25% have a market capitalisation of \$5 million or less); and
 - (b) unlike a number of major listing markets in other financial centres (e.g. LSE and TSX), ASX does not offer a separate alternative ('venture' or 'growth') listing board for smaller, more speculative, entities.
- 71 While crowd-sourced equity funding may in time offer some entities an alternative to listing on ASX, in other jurisdictions 'private markets' are presenting an alternative for those who might otherwise have chosen to list on a public exchange. A 'private market' connects buyers and sellers of securities in private or unlisted entities (e.g. NASDAQ Private Market and SharesPost).
- 72 Developments in private markets overseas have been identified as one reason why entities are staying private for longer. One report suggests the average age of entities in the United States at the time of going public has doubled since 1999–2000 (from five or six years) to 11 years in 2014.¹⁷
- 73 As with crowd-sourced equity funding, if this type of market structure gains more mainstream traction in Australia, then clear consideration would need to be given to the extent it is presenting a competitive alternative to entities raising capital under the listing standards administered by ASX. It would also raise considerations about how traditional approaches to the administration of ASX listing standards differ from cheaper and potentially more streamlined alternatives.

Changes in technology and information management

- 74 Disruptive technology and wide-scale adoption of social media by investors and listed entities is significantly reshaping how investors invest in markets and the role that ASX listing standards have traditionally played in that process.
- 75 One example is the trend away from using full-service brokers to electronic service providers that offer direct ('un-intermediated') access to the market. This is a trend increasingly embraced by retail investors, with more than 50% now investing in this way.
- 76 We are concerned with ensuring that investors do not view robust listing standards as an alternative to undertaking their own careful consideration

¹⁷ Ritter, J, *Initial public offerings: Median age of IPOs through 2015*, January 2016.

when making investment decisions about equities listed on ASX. All the same, increasing use by retail investors of direct access models emphasises the critical importance of the gatekeeper function the ASX listing standards play in making available investments that over half of Australian retail investors now access through their broker with the 'click of a button'.

- 77 At the same time, investors continue to draw on a growing range of non-traditional sources of information for their investment decisions, with 37% of direct investors using information from the internet when making investment decisions.¹⁸ An increasing number of listed entities are also widely using social media to communicate with investors.
- 78 Developments in the widespread use of information and communication channels offer enormous benefits and efficiencies to entities and investors alike. They do, however, also pose challenges to the ASX listing standards and the Corporations Act—which emphasise the importance of listed entities disclosing price-sensitive information to the ASX for distribution to the market before it is sent anywhere else. The intention is that investors use the ASX market announcement service as their primary source for listed entity information and updates.
- 79 Following an agreed action from ASIC's assessment of ASX in 2010,¹⁹ ASX reviewed and revised [Guidance Note 8 \(PDF 961 KB\)](#) (GN 8). We consider that ASX has done an important job of emphasising the expectations and legal obligations of ASX-listed entities on continuous disclosure. Since ASX reissued GN 8 in May 2013, we have identified a statistically significant fall (of around 50%) in surveillance alerts for continuous disclosure matters when compared to the couple of years leading up to the release of updated GN 8. We consider a material factor in this fall has been the greater clarity and understanding ASX-listed entities have of their relevant obligations as a result of the work by ASX.
- 80 Nevertheless, effective information management and related developments in technology will continue to shape the application of the ASX listing standards over time—as they will for all aspects of financial markets here and overseas. In order to ensure its listing standards continue to be fit for purpose, ASX will need to continue its firm focus in this area.
- 81 ASX will also need to ensure that the technology it uses to support the processing and dissemination of information to the market remains robust and effective.

¹⁸ ASX, [The Australian share ownership study \(PDF 1.2 MB\)](#), 2014, p 40.

¹⁹ [Report 222](#) Market assessment report: ASX group (REP 222), p 16.

Example

On 28 April 2015, NASDAQ's Shareholder.Com investor relations service inadvertently made an early version of Twitter's earnings release accessible to 'web crawlers' before it was visible to human investors.

The market reacted dramatically to the unintended and early release of this information.

- 82 This example serves as a critical reminder to all listing markets that, in this day and age, the technology that supports listing standards may be as important to investor trust and confidence as the listing standards themselves.
- 83 More broadly, the developments discussed in this section are only a sample of the developments taking place in financial markets both here and overseas. Each development challenges traditional approaches to ASX listing standards, and serves to underscore the importance of ASX taking a forward-looking and proactive approach to ensuring its listing standards remain fit for purpose and continue to meet market expectations.
- 84 Section C sets out a number of good practices that we have observed and which we consider will assist all Australian listing markets—and those considering a listing function—to ensure their listing standards continue to support fair, orderly and transparent markets.

C Good practice principles for listing standards

- 85 Based on our observations, good practice listing standards are made up of:
- (a) effective listing rules that appropriately deal with admission and ongoing criteria; and
 - (b) a robust and substantive approach to the monitoring and enforcement of those listing rules.

Listing rules

Principles for admission criteria

Appropriate standards: Listing rules set standards for quality, size and operations that are consistent with the expectations of a listed entity in the Australian financial market.

Viability: The entity can demonstrate sufficient working capital is available to achieve the business objectives stated in the capital raising for listing.

Robust governance: The entity can demonstrate that directors, management and systems have suitable integrity, robustness and the relevant experience required to support the obligations of a listed entity.

Legitimate intent to access capital market: The entity's reasons for accessing the Australian capital market are to raise capital to support genuine business plans for growth and innovation.

Genuine secondary market liquidity: The entity can demonstrate genuine and robust investor interest at the point of listing.

Principles for ongoing obligations

Disclosure: The listing rules require timely, clear and complete disclosure to investors of information material to the price of a listed entity's securities.

Rights of new and existing shareholders: The listing rules require that issuing and maintaining securities is done with rights that are fair to both existing and new shareholders.

Engagement with shareholders: The listing rules set requirements for:

- meetings and other communications with shareholders to occur in a manner that facilitates constructive engagement; and
- active engagement by listed entities with shareholders for particular corporate actions, transactions involving persons in positions of influence and significant directional changes.

Trading: The listing rules impose requirements on listed entities that facilitate the efficient trading of securities. For example, rules requiring:

- the free transfer of ownership interests; and
- that any further shares issued (such as under rights issues) are quoted on the market in a timely way.

Suitability: The listing rules set ongoing expectations consistent with the listing criteria, and articulate the circumstances in which the market operator will pursue de-listing.

Administration of listing rules

Principles for good governance

Responsibility sits with the board and senior management: The governance arrangements of the licensed market operator demonstrate a clear and active understanding that:

- the responsibility for meeting the statutory obligations as a market licensee—and the strategic approach to the administration of the listings function—sits with the board of the market licensee; and
- the cultural and strategic approach to the administration of the listing rules is set by the board and senior management of the market licensee—with a clear focus on the interests of investors.

Reporting and evaluation: The governance arrangements of the market operator reflects an approach to the discharge of statutory obligations that is supported by routine, data-driven, evidence-based reporting, and enables timely evaluation of the extent:

- statutory obligations are being met;
- administration is consistent with the substance, spirit, intention and purpose of the listing rules; and
- current settings are fit for existing and future purpose.

Principles for resourcing

Sufficient resources should be available at all times: The licensed market operator should allocate sufficient resources to the administration of the listing rules to ensure, at all times:

- rigorous and substantive testing of entities against admission criteria;
- robust and ongoing compliance assessment of listed entities, as measured against the substance, spirit, intention and purpose of the listing rules; and
- enforcement action is taken where effective and appropriate.

This includes resourcing that supports, at all times, the licensed market operator to:

- evaluate the suitability of business models;
- evaluate wider suitability for listing issues;
- challenge, where appropriate, listee boards and executives on compliance with the substance, spirit, intention and purpose of the listing rules;
- evaluate the appropriateness and effectiveness of any enforcement action, and have a sound basis for selecting the chosen approach; and
- proactively anticipate risks and landscape shifts, and deal with them in a timely and effective manner.

Sufficient resourcing: In order to achieve the outcomes above, the licensed market operator should maintain:

- Staff with the requisite level of expertise, seniority and judgement—and sufficient redundancy for peak times.
- Robust organisational systems and processes, including:
 - resourcing models;
 - escalation processes;
 - lessons learned and continuous improvement models;
 - fully auditable trails of material decisions taken; and
 - effective service-level agreements with outsourced or delegated parties.
- Technology and quantitative systems that provide:
 - real-time monitoring;
 - data capture and interrogation; and
 - robust and granular trend analysis across a range of critical measures (e.g. quality of compliance).
- Publication of meaningful statistics that demonstrate the monitoring and enforcement activities and relevant outcomes, in order to promote investor confidence and deter misconduct

Principles for approach and culture

Cultural approach: Administration should be driven by a cultural predisposition within the market operator towards the substance, spirit, intention and purpose of the listing rules, with a focus on the interests of investors.

Characteristics of approach: The approach by the market operator is characterised by an emphasis on decision making, and the exercising of judgement and discretion, that is:

- proactive (versus reactive);
- substance over form;
- outward rather than inward-looking—in a way that, for example, readily identifies global trends before they crystallise in the Australian market; and
- based on data and evidence.

Serving stakeholders: Professionalism and efficiency should be integral to serving all stakeholders.

Key terms

Term	Meaning in this document
ASIC	Australian Securities and Investments Commission
assessment period	1 July 2013 to 30 November 2015
ASX	ASX Limited or the licensed market operated by ASX Limited
Australian market licence	An Australian market licence under s795B of the Corporations Act that authorises a person to operate a financial market
Ch 7	A chapter of the Corporations Act (in this example numbered 7), unless otherwise specified
Corporations Act	<i>Corporations Act 2001</i> , including regulations made for the purposes of that Act
GN 8	An ASX Guidance Note (in this example numbered 8)
IPO	Initial public offering
listing market	A licensed market that has listing standards
listing rules	Has the meaning given in Ch 7 of the Corporations Act
listing standards	The listing rules of a listing market and the administration of those rules
market licensee	Holder of an Australian market licence
NSXA	The market operated by National Stock Exchange of Australia Limited
SIM VSE	The market operated by SIM Venture Securities Exchange Ltd
SSX	The market operated by Sydney Stock Exchange Limited
s792A(a) (for example)	A section of the Corporations Act (in this example, numbered 792A(a), unless otherwise specified