



ASIC

Australian Securities & Investments Commission

REPORT 518

Assessment of Sydney Stock Exchange Limited's listing standards

March 2017

About this report

This report presents the findings of our assessment of Sydney Stock Exchange Limited's listing standards under s794C of the *Corporations Act 2001*, for the period 1 July 2013 to 2 June 2016.

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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.

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- 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

1 Listing standards are critical to the integrity of the Australian equities market, and the trust and confidence investors have in it. As one of only a small number of domestic listing markets, Sydney Stock Exchange Limited (SSX) has an important role to play in upholding standards expected of listing markets in Australia.

Note: SSX was formerly known as Asia Pacific Exchange Limited (APX) and Asia Pacific Stock Exchange Limited.

2 As a licensed market operator, SSX is required to administer its listing standards in accordance with its statutory obligations.

3 We have reviewed the extent to which SSX had in place adequate arrangements to operate its listing market during the period 1 July 2013 to 2 June 2016 (the assessment period), with a specific focus on SSX's arrangements for:

- (a) handling conflicts of interest; and
- (b) monitoring and enforcing compliance with its listing rules.

4 We have identified a number of areas where SSX should make changes to improve compliance with its statutory obligations. These areas and the nature of these changes are set out in Section B. At the time of publication, SSX had made a number of operational changes and had committed to making others: see Table 1.

5 We also recommended that a delegate of the Minister impose additional conditions on SSX's Australian market licence. Following submissions from SSX, additional conditions were imposed: see paragraph 40.

6 These licence conditions and the operational changes proposed by SSX are designed to strengthen the controls SSX has in place to manage the unique conflicts which arise because:

- (a) the exchange is a wholly owned subsidiary within a corporate group; and
- (b) other businesses owned by the exchange owner provide professional advisory services to entities seeking admission to list on the exchange.

7 We consider that these actual or perceived conflicts of interest will continue to require particular attention while other entities owned or controlled by the owner of the exchange:

- (a) play a commercial role in introducing companies to SSX; and/or
- (b) are relied on by SSX to identify whether entities for listing are genuine.

8 In taking particular care to ensure that its conflicts of interest are robustly managed, SSX should focus on having in place adequate arrangements to

take independent action to monitor and enforce its operating rules. This includes arrangements for independently monitoring and enforcing rules requiring an entity to be appropriate for admission to its market.

- 9 We also recommend that SSX gives ongoing consideration to the most efficient steps it could take to materially reduce its reliance on entities related to its parent, AIMS Group Holding Pty Ltd (AIMS Group Holding) for listing introductions. We see this as important to ensuring the listing standards of Australian markets are upheld.

Note: AIMS Group Holding Pty Limited (ACN 137 063 113) is now named Great World Financial Group Pty Limited (ACN 137 063 113).

- 10 We will continue to closely monitor SSX's arrangements, as well as its implementation of the conflict management and market supervision controls it has agreed to introduce by way of licence conditions and related operational changes.

A Listing standards

Key points

The listing standards of licensed Australian market operators are critical to the confidence of investors in the Australian equities market. Through effective administration of listing standards, Australian market operators support an environment where:

- investors can have confidence to pursue opportunities to grow their wealth; and
- issuers can gain access to those investors to fund innovation and expand their business.

In 2014, SSX recommenced its trading operations. In doing so, it became one of a small number of listing markets in Australia.

The focus of our assessment of SSX's listing standards has been on the adequacy of its arrangements for handling conflicts of interest and monitoring and enforcing compliance with its listing rules.

Role of listing standards in financial markets

- 11 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.
- 12 The term 'listing standards' is used in this report to refer to:
- (a) *the listing rules*—the rules implemented by the operator of a listing market, such as SSX, 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.
- 13 Listing standards are the framework a market operator uses to consider 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.
- 14 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 its investors and the market at large.

- 15 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.
- 16 Among other things, this helps reduce the risk premium investors require to invest in Australian businesses, making these businesses more efficient in the long term and Australians more prosperous.
- 17 For these reasons, in 2015 we commenced a review of listing standards across Australian equity markets. The review has resulted in our observations of good practice principles for listing standards for domestic listing markets: see the Appendix.

Role of SSX's listing standards in Australian financial markets

- 18 A decision by SSX to list an entity is an essential pre-condition to the entity being able to access capital through the SSX market. In return, listed entities are subject to requirements designed to support investor trust and confidence which exceed those required of unlisted entities.
- 19 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.
- 20 As long as SSX permits the equity securities of these entities to remain quoted, they 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 SSX has permitted it to be continuously quoted on its market—with the effect that the entity has, at all relevant times, been subject to SSX's monitoring and enforcement of the listing rules, including disclosure: s713, 708AA and 708A of the *Corporations Act 2001* (Corporations Act).

Assessment of SSX's listing standards

21 Under s794C(2), we may assess how well a market licensee is complying with any or all of its obligations as a market licensee in Ch 7 of the Corporations Act.

22 When we published the most recent SSX assessment report in 2013, SSX had not relaunched its business and its primary and secondary markets were dormant. In [Report 379](#) *Market assessment report: Asia Pacific Exchange Limited* (REP 379) we indicated our intention to undertake a subsequent assessment of SSX once its market had a history of operation.

The focus of our assessment

23 We used the assessment process to:

- (a) reach conclusions about the adequacy of the arrangements SSX has in place to meet specific obligations under s792A(c) of the Corporations Act; and
- (b) identify issues that in our view need, or may need, to be addressed to improve compliance with its obligations under s792A(c) as an Australian market licensee.

24 Our engagement with SSX during the assessment period involved the analysis of materials, including:

- (a) SSX's internal working, policy and management documents;
- (b) SSX's interaction with its listed entities on admission, disclosure and compliance matters; and
- (c) information that we received from and about SSX in the ordinary course of our dealings with SSX as a market licensee.

25 We looked at the following features of SSX's listing standards:

- (a) SSX's commercial and regulatory strategy for its listing functions;
- (b) SSX's relevant governance and internal structure, including resources to implement its conflict handling arrangements; and
- (c) SSX's culture and approach to its listing standards.

Note: SSX has had the opportunity to view and comment on the factual accuracy of this report. Where appropriate, this report reflects SSX's comments. SSX should not be taken to have agreed with all the contents or the findings in this report.

B Assessment of SSX's listing standards

Key points

SSX is required to have adequate arrangements in place to manage conflicts of interest and to monitor and enforce its listing rules. We identified various areas where SSX should make changes to improve compliance with its obligations.

Additional conditions have been imposed on SSX's Australian market licence to strengthen the management of conflicts between SSX's responsibility to operate a fair, orderly and transparent market and the commercial interests of its parent, AIMS Group Holding: see paragraph 40.

- 26 During the assessment period, SSX had five entities admitted to its official list. In March 2017, one of these entities de-listed from SSX.

Governance and ownership structure

- 27 During the assessment period:
- (a) SSX was a wholly owned subsidiary of AIMS Group Holding;
 - (b) the sole director and beneficial owner of AIMS Group Holding was also sole executive director of SSX;
 - (c) two of the four directors of SSX were the only key persons and responsible managers for a wholly owned subsidiary of AIMS Group Holding that provided listing consultancy services to each of the five entities admitted to its official list;
 - (d) SSX was reliant on funding from AIMS Group Holding and one of its wholly owned subsidiaries to meet the majority of its expenses, and SSX relied on this same wholly owned subsidiary for its human and IT resources to conduct its daily activities;
 - (e) the SSX board delegated to an admissions committee their power under the listing rules to admit an applicant to the official list. Three of four members of the admissions committee were ultimately employed by AIMS Group Holding through the arrangements noted in (d) above.

Note: During the assessment period one of the four directors resigned on 22 March 2016 and has not been replaced.

- 28 All of the five entities admitted to the SSX list received listing advisory and related services from entities that were either:
- (a) wholly owned subsidiaries of AIMS Group Holding; or
 - (b) overseas-based entities of which the only director and beneficial owner was also the sole executive director and beneficial owner of SSX.

Conflicts of interest

- 29 SSX must have adequate arrangements to manage any conflicts so that it does not allow commercial interests to prevail over its obligation to operate a market that is fair, orderly and transparent.
- 30 Our assessment identified a number of material concerns in the arrangements SSX had in place to manage conflicts of interest during the assessment period. These arrangements should be improved.
- 31 In addition to the perceived or actual conflicts in paragraphs 27–28, we found:
- (a) insufficient independence of the SSX board from AIMS Group Holding, as two of three board members are directly associated with AIMS Group Holding or its related entities which generate income from listing consultancy services performed for prospective listees to SSX;
 - (b) the level and rigour of monitoring and oversight by the SSX board of its conflict handling arrangements should be enhanced, given the ownership and business model where the market is owned by an entity that also had related entities providing listing advisory services to the prospective listed companies under a commercial agreement;
 - (c) the SSX board relied on an independent Market Supervision Compliance Committee (MSCC) to ensure oversight of conflicted listing applications to minimise the risk of inappropriate and conflicted admission decisions. There was a lack of records to demonstrate the MSCC considered the conflict where related entities appointed under commercial terms bring listees to the SSX market;
 - (d) the SSX's admissions committee (the body charged with determining if a company was suitable for listing) lacked appropriate protocols, including record keeping and minute taking, to ensure the procedures in place to demonstrate its decisions were taken independently of AIMS Group Holding were functioning properly.

Monitoring and enforcement of listing rules

- 32 Conflicts of interest may arise in any area where a market licensee makes decisions about monitoring and enforcing its listing rules. For example, conflicts of interest may arise in connection with SSX's administration of its listing standards, including its decisions about:
- (a) admission of an entity to its market as a listed entity;
 - (b) monitoring of a listed entity; or
 - (c) enforcement of its listing rules.
- 33 For example, in making decisions about the admission of an entity to its list, SSX is required to consider whether the entity's structure and operations are appropriate to be a listee: SSX Listing Rule 4.18.

- 34 SSX's listing rules include an obligation on listed entities to provide immediate disclosure of information that a reasonable person would expect to have a material effect on the price or value of its securities: SSX Listing Rule 11.1.
- 35 This continuous disclosure obligation is fundamental to maintaining the integrity of the SSX market by ensuring transparency and enabling investors to have equal access to timely, clear and complete disclosure of information material to the price of a listed entity's securities.
- 36 In discharging its obligations to monitor and enforce continuous disclosure and other listing rule obligations, we expect SSX to undertake an independent, thorough and robust assessment of each application to be a listed entity. This includes due consideration by SSX of whether a listee:
- (a) is appropriate for listing; and
 - (b) adequately understands the continuing obligations that must be complied with as a listed entity.
- 37 On 17 March 2015, the securities of both Australia Samly Holdings Group Limited (Samly) and ZhongHuanYun Holdings Group Limited (ZhongHuanYun) were suspended from official quotation on the SSX market pending release of their Appendix 15–1 half-yearly financial reports, as required under SSX Listing Rule 15.13. At the time of these suspensions, Samly and ZhongHuanYun were the only listees on the SSX market.
- 38 Shortly after their suspension, the financial reports and Appendices 15–1 released by Samly reported a 365% decrease in net profit resulting in a loss, and ZhongHuanYun reported a decrease of 92% in profit, relative to previous corresponding periods.
- 39 In our view, announcements of decreases in profitability of the magnitude set out above, and such a short time from listing, by a material proportion of the listed market should not occur on a market where listees understand their continuous disclosure obligations, and where a market operator is enforcing appropriate standards in its listing rule admissions process.

Licence conditions to address our findings

- 40 The findings in this report raised important matters about the unique conflicts that have arisen from SSX's ownership and business model. These conflicts need to be addressed by SSX to improve compliance with its obligations as a market operator. Additional conditions have been imposed on SSX's Australian market licence that:
- (a) ensure a majority of independent directors on the SSX board;
 - (b) require SSX to appoint an independent person to conduct an annual review and report to ASIC on:

- (i) whether SSX has appropriate internal policies to ensure its compliance with its statutory obligations (and has implemented these policies effectively); and
- (ii) whether its listing rules policies and procedures for admissions to its official list have been effectively implemented;
- (c) ensure its admissions committee is independent and constituted by members who have relevant expertise; and
- (d) restrict attendees at admissions committee meetings to those who are not in a position of conflict.

Note: A variation notice under section 796A of the Corporations Act imposed these additional conditions on SSX's Australian market licence. This notice took effect on 23 March 2017 and was published in the [ASIC Gazette](#) of 28 March 2017.

SSX's response to our findings

- 41 In response to our findings SSX has recently undertaken the initiatives set out in Table 1.

Table 1: Initiatives undertaken by SSX

Initiative 1	The executive director of SSX stepped down to become a non-executive director and remain as deputy chair. A Chief Executive Officer has been appointed.
Initiative 2	The board of SSX has approved amendments to the terms of reference of the MSCC, including changes to: <ul style="list-style-type: none"> • the composition of the committee; • the eligibility of membership of the committee; and • the role of the committee.
Initiative 3	The SSX board has approved amendments to the terms of reference of the admissions committee, including changes to: <ul style="list-style-type: none"> • the composition of the committee; • the eligibility of membership of the committee; and • the processes in place to manage conflicts of interest for applications.
Initiative 4	SSX has appointed a compliance officer.
Initiative 5	SSX has proposed to introduce Board Conflicts Protocols and changes to Board Delegations. We recommend that the board consider the draft protocols and changes to delegations and report to ASIC by 1 April 2017 on whether it has adopted these.
Initiative 6	SSX has introduced a quarterly compliance report to the board and the MSCC.

Appendix: Good practice listing standards

- 42 Listings standards are critical to the integrity of the Australian equities market, and the trust and confidence investors have in it.
- 43 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.
- 44 This appendix sets out a number of good practices that we have observed in our listing standard assessments 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.

Listing rules

Principles for admission criteria

- 45 *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.
- 46 *Viability:* The entity can demonstrate sufficient working capital is available to achieve the business objectives stated in the capital raising for listing.
- 47 *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.
- 48 *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.
- 49 *Genuine secondary market liquidity:* The entity can demonstrate genuine and robust investor interest at the point of listing.

Principles for ongoing obligations

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

- 51 *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.
- 52 *Engagement with shareholders:* The listing rules set requirements for:
- (a) meetings and other communications with shareholders to occur in a manner that facilitates constructive engagement; and
 - (b) active engagement by listed entities with shareholders for particular corporate actions, transactions involving persons in positions of influence and significant directional changes.
- 53 *Trading:* The listing rules impose requirements on listed entities that facilitate the efficient trading of securities. For example, rules requiring:
- (a) the free transfer of ownership interests; and
 - (b) that any further shares issued (such as under rights issues) are quoted on the market in a timely way.
- 54 *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

- 55 *Responsibility sits with the board and senior management:* The governance arrangements of the licensed market operator demonstrate a clear and active understanding that:
- (a) 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
 - (b) 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.
- 56 *Reporting and evaluation:* The governance arrangements of the market operator reflect 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:
- (a) statutory obligations are being met;
 - (b) administration is consistent with the substance, spirit, intention and purpose of the listing rules; and
 - (c) current settings are fit for existing and future purpose.

- 57 *Conflict identification and management:* Market operators should carefully consider appointees to the board and internal management committees to ensure that any actual or apparent conflicts of interest of the appointees arising from their roles and relationships with other entities (such as listees and their advisers, and majority shareholders) are managed in a manner to meet their general licensee obligations.

Principles for resourcing

- 58 *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:
- (a) rigorous and substantive testing of entities against admission criteria;
 - (b) robust and ongoing compliance assessment of listed entities, as measured against the substance, spirit, intention and purpose of the listing rules; and
 - (c) enforcement action is taken where effective and appropriate.
- 59 This includes resourcing that supports, at all times, the licensed market operator to:
- (a) evaluate the suitability of business models;
 - (b) evaluate wider suitability for listing issues;
 - (c) challenge, where appropriate, listee boards and executives on compliance with the substance, spirit, intention and purpose of the listing rules;
 - (d) evaluate the appropriateness and effectiveness of any enforcement action, and have a sound basis for selecting the chosen approach; and
 - (e) proactively anticipate risks and landscape shifts, and deal with them in a timely and effective manner.
- 60 *Sufficient resourcing:* In order to achieve the outcomes above, the licensed market operator should maintain:
- (a) staff with the requisite level of expertise, seniority and judgement—and sufficient redundancy for peak times;
 - (b) robust organisational systems and processes, including:
 - (i) resourcing models;
 - (ii) escalation processes;
 - (iii) lessons learned and continuous improvement models;
 - (iv) fully auditable trails of material decisions taken; and
 - (v) effective service-level agreements with outsourced or delegated parties;

- (c) technology and quantitative systems that provide:
 - (i) real-time monitoring;
 - (ii) data capture and interrogation; and
 - (iii) robust and granular trend analysis across a range of critical measures (e.g. quality of compliance);
- (d) 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

- 61 *Cultural approach:* Administration should be driven by a cultural pre-disposition within the market operator towards the substance, spirit, intention and purpose of the listing rules, with a focus on the interests of investors.
- 62 *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:
 - (a) proactive (versus reactive);
 - (b) substance over form;
 - (c) outward rather than inward-looking—in a way that, for example, readily identifies global trends before they crystallise in the Australian market; and
 - (d) based on data and evidence.
- 63 *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 2 June 2016
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
listing market	A licensed market that has listing standards
Listing Rule 4.18	A rule of the SSX Listing Rules (in this example numbered 4.18)
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
MSCC	Market Supervision Compliance Committee
REP 379	An ASIC report (in this example numbered 379)
SSX	Sydney Stock Exchange Limited or the exchange market operated by SSX Note: SSX was formerly known as Asia Pacific Exchange Limited (APX) and Asia Pacific Stock Exchange Limited
s794C	A section of the Corporations Act (in this example numbered 794C), unless otherwise specified