



**ASIC**

Australian Securities & Investments Commission

**REPORT 538**

# **Assessment of National Stock Exchange of Australia Limited's listing standards**

August 2017

## **About this report**

This report presents the findings of our assessment of National Stock Exchange of Australia Limited's listing standards under s794C of the *Corporations Act 2001*, for the period 1 July 2013 to 8 August 2016.

### 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

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

# Contents

<b>Executive summary</b> .....	<b>4</b>
<b>A Background</b> .....	<b>6</b>
Our last assessment of NSX.....	6
<b>B Listing standards</b> .....	<b>8</b>
Role of listing standards in financial markets .....	8
Role of NSX's listing standards in Australian financial markets .....	9
<b>C Assessment of NSX's listing standards</b> .....	<b>10</b>
Governance: Persons of influence and conflicts of interest .....	10
NSX's listing strategy and suitability .....	12
Monitoring and enforcement of listing and operating rules.....	14
NSX's implementation of the agreed actions.....	17
<b>Appendix: Good practice listing standards</b> .....	<b>20</b>
<b>Key terms</b> .....	<b>24</b>

## 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, National Stock Exchange of Australia Limited (NSX) has an important role to play in upholding standards expected of listing markets in Australia.
- 2 As a licensed market operator, NSX is required to administer its listing standards in accordance with its statutory obligations.
- 3 We undertook an assessment of NSX's listing standards over the period 1 July 2013 to 8 August 2016 (the assessment period). We drew on materials, analysis and research from the assessment period and subsequent discussions with NSX. We reviewed the extent to which NSX had in place adequate arrangements to operate its listing market, with a specific focus on NSX's:
  - (a) governance, including resources to implement its conflict handling measures and arrangements for persons of influence;
  - (b) commercial and regulatory strategy for its listing functions, including in relation to the suitability of companies for listing to ensure a fair, orderly and transparent market; and
  - (c) NSX's monitoring and enforcing of compliance with its listing rules.

### Changes and improvements

- 4 Our assessment identified a number of areas for NSX, and its parent company NSX Limited (NSXL), to make changes. These changes are needed to improve compliance with NSX's statutory obligations and to address concerning trends which, if left unaddressed, could undermine NSX's ability to meet its obligations in the future. NSX has agreed to a number of actions that are designed to ensure that:
  - (a) persons that can influence NSX are of good repute, are sufficiently knowledgeable and will act in the best interests of the NSX market as well as the wider Australian market;
  - (b) the NSX market attracts issuers with legitimate motives and connection to Australia and ensures listings occur under Australian-regulated disclosure documents; and
  - (c) the NSX market operates with integrity and its users are informed.
- 5 Our findings and the agreed actions are set out in Section C.

## Next steps

- 6 NSX has embarked on an organisational transformation over the past 18 months. We appreciate that an important driver for NSX in designing these changes has been to better position itself to meet its statutory obligations going forward.
- 7 We will continue to monitor NSX's listing arrangements. NSX has agreed to update ASIC by 31 October 2017 on its progress in addressing each of the agreed actions in this report. NSX has also agreed to engage a third party to review its implementation of the agreed actions and to provide a report to ASIC on the findings by 31 March 2018.
- 8 Our assessment has uncovered serious questions about the rationale for some foreign listings on NSX. As part of this, we have seen that some of these listings have a disproportionate amount of trades occurring off-market following very thin trading on NSX. This activity is likely not unique to NSX so we are separately examining the activity across all Australian equity markets. The objective is to identify the normal distribution for this activity and to consider the nature, source and prevalence of unusual activity. This separate work may lead to additional expectations for market operators to deter this activity and to maintain the integrity, quality and strong international reputation of the Australian financial system.

## A Background

- 9 NSX's parent company, NSXL, is a listed company on the Australian Securities Exchange, the market operated by ASX Limited. In January 2016, NSXL announced it had received \$5.354 million (inclusive of costs) as a result of completing a share placement and that these funds would be used for working capital purposes.

Note: Also over the assessment period, the major Australian shareholder, Financial and Energy Exchange Limited, sold around 45% of its 55% interest in NSXL for a total of around US\$20 million. As a result of this sale and the share placement the ownership of NSXL changed such that the top four shareholders holding 59.1% of the issued shares were now entities based offshore.

- 10 The funding injection has supported NSX to embark on a number of important internal changes over the past 18 months. NSX has relocated its offices to Sydney and had a change in management, strategic focus and increased resourcing. We can see areas where these changes are beginning to take effect, for example in NSX's:

- (a) active focus on recruiting experienced and reputable professionals;
- (b) improved day-to-day engagement with ASIC, including greater and more proactive engagement with our market surveillance area which has also led to more referrals of suspicious activity on the NSX market; and
- (c) constructive engagement during our assessment, including recognising our concerns and embarking on remedial actions.

- 11 As at 31 July 2017, NSX had 72 entities admitted to its official list. Of these, 21 were from emerging markets. These 72 entities represented a combined market capitalisation of \$4.8 billion. The highest market capitalisation was \$1.96 billion and the median was \$9.2 million.

Note: Emerging markets are jurisdictions in Eastern Europe, Asia and the Pacific (excluding Singapore, Hong Kong, Japan and New Zealand), Africa, South America, Mexico, Central America, the Caribbean or the Middle East. In April 2017, we outlined some key observations on regulatory issues relating to entities listed on Australian markets with substantial connection to emerging markets: see [Report 521 Further review of emerging market issuers](#) (REP 521).

### Our last assessment of NSX

- 12 The last assessment of NSX (see [Report 380 Market assessment report: NSX Group](#) (REP 380)) focused on the sufficiency of NSX Group's financial resources, as well as NSX's arrangements for managing conflicts of interest, monitoring and enforcing compliance with the market's operating rules, and its technology.

- 13 In light of our previous concerns, we also looked at NSX's financial resources as part of the current assessment. For more than three years, NSX has been reporting to ASIC monthly on its financial resources to ensure it has sufficient funds to operate the NSX market. It received a significant funding injection in 2016: see paragraph 9. NSX has agreed as part of the current assessment to keep its financial resourcing under close review. NSX will continue to provide monthly updates to ASIC about its financial position as per the recommendation made in [Report 326 Market assessment report: NSX Group](#) (REP 326) published in February 2013.
- 14 Most of the agreed actions from our last assessment have been implemented. The exception was an action to undertake conflict of interest training. NSX, as part of this current assessment, will engage a third party to review its implementation of the agreed actions and report to ASIC: see paragraph 57. This will include the implementation by NSXL and NSX of a review of conflict handling arrangements, as well as training on conflict handling expectations for all staff and board appointees: see paragraph 35.

## B 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.

### Role of listing standards in financial markets

- 15 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.
- 16 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 NSX, that deal with an issuer'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.
- 17 Listing standards are the framework a market operator uses to consider whether an entity is appropriately qualified to list on 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, as well as its intention for listing on the particular market.
- 18 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.
- 19 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.



- 20 Among other things, this helps to reduce the risk premium investors require to invest in Australian businesses, making these businesses more efficient in the long term and Australians more prosperous. It is also critical for maintaining the integrity, quality and strong international reputation of the Australian financial system.
- 21 For these reasons, in 2015 we began a review of listing standards across Australian equity listing markets. It started with the Australian Securities Exchange (see [Report 480](#) *Assessment of ASX Limited's listing standards for equities* (REP 480)), Sydney Stock Exchange (see [Report 518](#) *Assessment of Sydney Stock Exchange Limited's listing standards* (REP 518)) and now NSX.
- Note: IR Plus Securities Exchange Limited, formerly SIM Venture Securities Exchange Limited, is 50% owned by NSXL. It is not currently operating so we have not included it within the scope of this report.
- 22 The review has resulted in our observations of good practice principles for listing standards for domestic listing markets, which have expanded with each market assessment: see the Appendix. NSX has agreed to review its listing framework in light of these principles and to make necessary changes to align with the principles.

## Role of NSX's listing standards in Australian financial markets

- 23 Listed entities are subject to requirements designed to support investor trust and confidence which exceed those required of unlisted entities.
- 24 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 issuer and transactions involving persons in positions of influence.
- 25 As long as NSX 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 NSX has permitted it to be continuously quoted on its market—with the effect that the entity has, at all relevant times, been subject to NSX's monitoring and enforcement of the listing rules, including disclosure: s708A, 708AA and 713 of the *Corporations Act 2001* (Corporations Act).

## C Assessment of NSX's listing standards

### Key points

The focus of our assessment of NSX has been on:

- governance (including conflicts of interest and arrangements for persons of influence);
- the strategy for its listing functions and the suitability of listings; and
- monitoring and enforcing compliance with its listing and operating rules.

We identified a range of concerning practices and trends during the assessment period. NSX has agreed to a number of actions to improve its compliance with its statutory obligations.

### Governance: Persons of influence and conflicts of interest

- 26 NSX, and by extension NSXL as the holding company of NSX, must have adequate arrangements to manage any conflicts so that it does not allow commercial interests to prevail over its obligation to operate the NSX market in a manner that is fair, orderly and transparent.
- 27 We also expect senior persons that influence, set and oversee the strategic direction of NSX, as an important standard setter and core infrastructure provider, to perform their roles in a manner that upholds the reputation of Australian financial markets. We expect that market infrastructure providers and senior persons within (or who influence) those organisations will operate their markets:
- (a) in a way that upholds the quality and integrity of the broader Australian market; and
  - (b) with a focus on the best interests of Australian businesses and investors.
- 28 Stemming from the significant changes in ownership of NSXL referred to in the note to paragraph 9, there was a change in the composition of the NSXL board. We were concerned that a number of nominations for directorships were for persons who appeared to have limited knowledge of Australian law, the Australian financial market and the rules of the NSX market.
- 29 These changes raise new and unique challenges for NSXL, including assessing the suitability of director nominees, the appropriate strategy for NSXL and NSX going forward, managing conflicts of interest and dealing with geographic and linguistic barriers.
- 30 We are concerned to ensure that any future appointments to the NSXL or NSX boards will have a focus on the best interests of the wider Australian market and meet our expectations for persons filling these important roles.
- 31 At the same time, due to an organisational restructure and relocation of the NSX office to Sydney, there were a number of senior personnel changes.

## Agreed actions

- 32 To address our concerns, NSXL and NSX have agreed to ensure that directors, secretaries, senior managers and other persons of influence are of good repute and are sufficiently experienced to ensure the sound and prudent management of the market. They will review these criteria regularly, including when a person changes from one key position to another.
- 33 NSXL and NSX have agreed to consider the following factors in determining if a person with significant influence is suitable for their role at the time of appointment and on an ongoing basis:
- (a) fame, character and integrity. This includes the attributes of diligence, honesty and judgement and ensuring that the person is not fined, suspended, disqualified, convicted of an offence under s206B(1) of the Corporations Act (or an overseas equivalent) or subject to any other sanction by Government or a regulatory or professional body (s853C(3) of the Corporations Act). NSX should validate this through its own checks rather than rely on undertakings;
  - (b) educational qualifications and financial market experience, including appropriate knowledge and skills to demonstrate professional competence. For example, a senior manager with responsibility for a specific area should have appropriate knowledge and experience in the area they have responsibility for and directors should have the requisite experience to fulfil their duties;
  - (c) understanding of, and compliance with, Australian law and the rules of the Australian market. Directors must ensure they properly and fully understand (and will comply with) their own legal obligations as a director of an Australian company and the corresponding duty of due diligence that they owe, as well as the legal and corporate governance obligations of NSX and NSXL;
  - (d) financial soundness, including whether they have been unable to fulfil any financial obligations or have been subject to bankruptcy;
  - (e) arrangements to manage or avoid conflicts of interest that would affect their ability to properly perform their role. NSX and NSXL should carefully consider potential director appointees and members of internal management committees to ensure that any actual or apparent conflict of interest arising from their roles and relationships with other entities (such as issuers and their advisers, and major shareholders) are managed in a manner that meets the licence obligations;
  - (f) conduct and involvement in events that may have taken place overseas and the person's connection with any person who may not be considered suitable; and
  - (g) ability to effectively fulfil their responsibilities, including participation in meetings and decision making. This should take account of the person's availability and commitment to performing the role (including in the context of any other roles or expectations on the person's time), their physical location and any language barriers. There should be

arrangements to ensure language barriers can be overcome and do not hinder the effective and efficient operation of the business. Importantly, the person must be accessible and able to communicate clearly with their colleagues during normal interactions and at short notice.

- 34 NSXL and NSX have agreed that, before appointing a person of influence, they will undertake appropriate checks to satisfy themselves and validate that the person meets the factors in paragraph 33 and that the appointment will not place NSX at risk of breaching its licence obligations under the Corporations Act. They will also notify ASIC of director nominations in sufficient time before an appointment, or consideration of a resolution to make an appointment at a general meeting, to allow ASIC to complete its checks. NSXL and NSX will provide reasonable assistance to inform ASIC and appointments will not be made until ASIC is comfortable that the licence can be adhered to.
- 35 NSXL and NSX have agreed to review their conflict handling arrangements and conduct training on conflict handling expectations for all staff and board appointees by 31 December 2017.

## NSX's listing strategy and suitability

- 36 As gatekeepers for Australian financial markets, licensed market operators must conduct an assessment of the quality and nature of the operations of companies that list in Australia, to ensure that they are suitable for listing and that their market is fair, orderly and transparent.
- 37 The core value for a company listing on an Australian equity market is typically the ability to access Australian investors and to raise capital in Australia, at either the point of listing or at a future time. It also creates the opportunity for a transparent and informed market in the company's securities.
- 38 During the assessment period we observed a growing trend for companies to list on NSX (mostly from emerging markets):
- (a) without raising capital through the market (23 out of a total of 34 issuers or 68%);
  - (b) without an Australian connection such as an Australian business or Australian investors. For example, there were 18 issuers (representing 53% of listings) that had their company based offshore; and
  - (c) only providing an information memorandum instead of a regulatory disclosure document (e.g. prospectus) (21 issuers or 62%). This means that the information may not include all the detail required in a regulatory disclosure document and is not reviewed by ASIC.

Note: During the full financial year 2016/17 (i.e. predominantly after the assessment period), the trend continued with 11 issuers using information memorandums out of a total of 14 (i.e. 79%).

- 39 We have also found a trend towards significantly more activity occurring in the issuers' securities through off-market bilateral transfers (typically offshore) than through the market. We question the value to the Australian economy and financial system, and the listing motivation and intent, of companies listing in Australia where:
- (a) no capital is raised;
  - (b) there is no connection to Australia; and
  - (c) there is comparatively limited on-market trading activity. For example, during the assessment period, securities in one listed company traded 8,650% more via off-market transfers than on the NSX market (i.e. 17.5 million compared to 200,000).
- 40 Our assessment identified a number of deficiencies in NSX's approach for determining the suitability of companies for listing, including verifying admission criteria such as the legitimacy of shareholders and other key persons, as well as the underlying businesses and track record of the companies. There was, for example, over-reliance on receiving undertakings from directors rather than NSX independently verifying certain facts (e.g. that a director does not have a criminal conviction).
- 41 As a holder of an Australian market licence, NSX is expected to undertake an independent, thorough and robust assessment of each listing application. This includes due consideration by NSX of whether an entity is appropriate for listing, which includes detailed consideration of whether:
- (a) the issuer has legitimate intentions for seeking a listing; and
  - (b) the issuer adequately understands the continuing obligations that must be complied with, such as continuous disclosure.

## **Agreed actions**

### **Strategic direction**

- 42 NSX has agreed that, by 30 September 2017, it will prepare, share with ASIC and maintain a written strategy identifying its target market (e.g. Australian companies or companies with a clear Australian connection). It will also outline the listings franchise, its growth strategies and associated risk profile.

### **Suitability for listing**

- 43 NSX has agreed that, by 31 December 2017, it will:
- (a) issue guidance for issuers on the suitability for listing and admission expectations. This should align with the articulated strategic direction and should address matters such as shareholder spread, issuer track record, corporate governance, business structures (e.g. prohibiting

- variable interest entities), capital structures and any overseas legal and regulatory obligations (for offshore-based issuers);
- (b) review and update its internal policies and/or procedures for determining the suitability for listing to clearly outline the factors to be considered. In addition to considering compliance with the law, listing rules and the matters in paragraph (a), it should include the use of appropriate sources to:
    - (i) verify the legitimacy of the issuer's business (e.g. existence of a business and that the business is as described);
    - (ii) make an assessment of the business's viability; and
    - (iii) undertake a more robust verification of the fame, character, integrity and suitability of the management team and directors;
  - (c) maintain adequate records of material engagements with issuers and potential issuers (and their representatives), NSX decisions about each issuer and its review of disclosure documents (including draft revised disclosures if any). The records should identify the key issues, evidence and the basis for listing decisions; and
  - (d) review and update its internal policies and/or procedures for verifying shareholder spread, including verification that shareholders are not associated (e.g. no common names or addresses) and maintaining adequate records evidencing these checks. NSX should also provide guidance to the market on its expectations.

### Compliance listings

- 44 NSX has agreed to limit the circumstances when an issuer may not produce a regulated disclosure document in accordance with our good practice listing standards: see paragraph 68 of the Appendix for the current good practice listing standards.

## Monitoring and enforcement of listing and operating rules

- 45 Under s792A(c) of the Corporations Act, a market operator must have adequate arrangements for monitoring and enforcing compliance with the operating rules of the market, including the listing rules.
- 46 We expect a listing market operator's monitoring arrangements to include arrangements to ensure issuers meet their continuous disclosure obligations and that the market is fair, orderly and transparent.
- 47 In addition to the use of technology to survey activity on the market, a market operator should undertake frequent monitoring of media, chat sites and research about listed companies. For foreign listings, this capability should be available for the overseas jurisdiction.

- 48 When market operators query an entity's activity on, or in relation to, their market, they should not settle for responses that do not reasonably and legitimately explain the activity.
- 49 Our assessment identified a number of concerns in the arrangements and practices NSX had in place for the ongoing monitoring of issuers and trading on the NSX market.
- 50 We found that the level and rigor of monitoring and oversight by NSX of capital raisings, continuous disclosure announcements and trading should be improved. There were instances where NSX should have queried activity earlier or issued follow-up queries to satisfy itself that the entity had complied with the operating rules and that NSX was meeting its statutory requirements to maintain a fair, orderly and transparent market.

Note 1: For example, five out of 11 capital raisings by one issuer over an 11-month period were issued at around a 90% discount (i.e. around 15 cents compared to a price of around \$1.40 on NSX at the time). The remaining six were done close to the price on NSX. This variation in price and the absence of shareholder complaints about their interest being significantly diluted causes us to question the legitimacy of the shareholder spread. We understand that NSX queried the prices but accepted the issuer's response (i.e. that shareholders approved the raisings) without investigating it further. There were a further two raisings outside the assessment period.

Note 2: Also see the [24 July 2017 enforceable undertaking offered to ASIC by Avalon Pacific Capital Pty Ltd](#) (a former market participant of NSX) in relation to concerning trading in five companies listed on NSX.

- 51 We also found that:
- (a) NSX's arrangements did not adequately cater for the growth in emerging market listings. For example, there was very limited monitoring of overseas sources despite emerging market listings being an increasingly important and targeted market segment for NSX;
  - (b) there was at least one instance where a responsible officer of a nominated adviser traded in securities of issuers that the adviser represented. Such trading may create conflicts of interest;
- Note: Nominated advisers help issuers with the listing application process and ensure that directors are aware of their responsibilities and obligations under the relevant listing rules. They play an important role in guiding issuers, particularly those from overseas who do not understand the Australian legal and regulatory regime.
- (c) there were examples where NSX did not appear to be monitoring and enforcing compliance with the listing rules for issuers whose securities were suspended from trading. We expect suspended securities to be treated similarly to other securities in terms of their requirements for disclosure; and
  - (d) there were some inconsistencies in the administration of trading halts for price-sensitive announcements, which may have affected the ability of investors to absorb and react to the market announcement.



## Agreed actions

### Issuer disclosure

52 NSX has agreed that, by 31 December 2017, it will:

- (a) review and strengthen its current systems, methodologies and procedures for, and frequency of, monitoring to uphold issuers' compliance with continuous disclosure requirements and other obligations. Particular attention should be paid to the growing prevalence of listings from emerging markets;
- (b) ensure it has access to appropriate expertise to effectively monitor and enforce compliance for matters under the JORC Code (e.g. relevant NSX staff to undertake JORC training, or NSX to procure access to external JORC experts);

Note: JORC is the Joint Ore Reserves Committee. It created the Australasian Code for Reporting of Exploration Results, Mineral Resources and Ore Reserves (known as the [JORC Code \(PDF 1.48 MB\)](#)), which is a professional code of practice that sets minimum standards for Public Reporting of Minerals Exploration Results, Mineral Resources and Ore Reserves.

- (c) review its internal policies and procedures for earnings announcements to manage its approach to those that may be materially different to the previous corresponding period. This includes policies and/or procedures for undertaking further inquiries to ascertain the reasons for such a change, reviewing whether an announcement should have been made before the reporting date, issuing queries to an issuer, and escalating a matter in the event an issuer's response is inadequate;
- (d) strengthen its controls for the administration of announcements to ensure trading halts are applied for price-sensitive announcements; and
- (e) update its guidance to provide clarity concerning its expectations for the currency of information to be included by issuers in their annual reports regarding the top 10 shareholder list. This is to include NSX introducing an operating rule requiring issuers to provide a distribution of shareholders in their annual reports. Our expectation would be that NSX then uses this information to periodically check issuer compliance with the ongoing spread requirement.

### Suspended securities

53 NSX has agreed that, by 31 December 2017, it will:

- (a) formalise its processes for monitoring long-term suspended securities, including clearly outlining the re-quotation process and the roles and timing of engagement of relevant NSX committees; and
- (b) enhance its guidance on how it will handle long-term suspensions and the possible removal from, and re-quotation to, the NSX official list. It should include an indicative period beyond which continued suspension will typically lead to de-listing (e.g. two years).



**Monitoring of trading**

- 54 NSX has agreed that, by 31 December 2017, it will review and enhance the monitoring of trading on its market, including reviewing the effectiveness of its alerts and its response to suspicious activity.

**Nominated advisers**

- 55 NSX has agreed that, by 31 December 2017, it will clearly communicate to all existing and prospective nominated advisers and issuers about the potential conflicts of interest that arise when a nominated adviser trades in the securities of issuers it represents, and NSX's expectations about avoiding or managing such conflicts.

**NSX's implementation of the agreed actions**

- 56 A summary of the agreed actions for NSX (and NSXL where relevant) and the implementation dates are in Table 1.

**Table 1: Summary of agreed actions**

<b>Financial resources</b>	NSX will continue to provide monthly updates to ASIC about its financial position: see paragraph 13	Continues to apply
<b>Persons of influence</b>	NSXL and NSX will ensure persons of influence are of good repute and sufficiently experienced: see paragraphs 32–34	Effective immediately
<b>Conflicts of interest</b>	NSXL and NSX will review conflict handling arrangements and conduct training for all staff and board appointees: see paragraph 35	31/12/2017
<b>Strategy</b>	NSX will: <ul style="list-style-type: none"> <li>• review its listing framework in light of the listing principles and make the necessary changes to align with the principles: see paragraph 22</li> <li>• document its listing strategy: see paragraph 42</li> </ul>	30/9/2017
<b>Listing suitability</b>	NSX will: <ul style="list-style-type: none"> <li>• issue guidance on the suitability for listing and admission expectations</li> <li>• review and update its policies for determining the suitability for listing</li> <li>• maintain adequate records of listing documents and correspondence</li> <li>• review and update policy for verifying shareholder spread</li> </ul> See paragraph 43	31/12/2017
<b>Compliance listings</b>	NSX will limit the circumstances when an issuer may not produce a regulated disclosure document: see paragraph 44	Effective immediately

<b>Issuer disclosure</b>	NSX will: <ul style="list-style-type: none"> <li>• review and strengthen monitoring of continuous disclosure</li> <li>• access expertise on the JORC Code</li> <li>• review policies for earnings announcements</li> <li>• strengthen controls for price-sensitive trading halts</li> <li>• update guidance on information to be included in issuer annual reports</li> </ul> See paragraph 52	31/12/2017
<b>Suspended securities</b>	NSX will: <ul style="list-style-type: none"> <li>• formalise its processes for monitoring long-term suspended securities</li> <li>• enhance guidance on long-term suspended securities</li> </ul> See paragraph 53	31/12/2017
<b>Monitoring of trading</b>	NSX will enhance the monitoring of trading on its market: see paragraph 54	31/12/2017
<b>Nominated advisers</b>	NSX will communicate to nominated advisers and issuers about conflicts of interest that may arise from trading in certain securities: see paragraph 55	31/12/2017

- 57 NSX has agreed to update ASIC by 31 October 2017 on its progress in addressing each of the agreed actions. Importantly, NSX will also engage an independent third party to review NSX's implementation of the agreed actions and prepare a report for ASIC on their findings by 31 March 2018.
- 58 NSX has advised that NSXL and NSX are already implementing a range of the agreed actions. For example:
- (a) reviewing conflict handling arrangements and preparing training for delivery to staff and directors;
  - (b) prepared a draft of NSX's listing strategy, including target listings;
  - (c) hired a Chinese-speaking market surveillance resource to help cater for the growth in emerging market listings;
  - (d) investigating commercial information systems to enhance the capabilities for due diligence on applications and monitoring of issuers;
  - (e) investigating increased functionality of existing surveillance systems and appointed a new market surveillance and market operations team;
  - (f) reviewing all practice notes to update them for current practice and have commenced drafting new practice notes addressing listing suitability and expectations of nominated advisers;
  - (g) relevant staff are booked in to attend JORC training;
  - (h) separated the functions of business development and admissions;
  - (i) implemented new procedures to ensure more transparent compliance with existing procedures on due diligence of suitability of listings;
  - (j) all new listing inquiries are told they will require a regulated disclosure document as part of their application to list on NSX;

- (k) plans to review its overall listing suitability framework by mid-2018, including a review of listing rules and admission requirements; and
- (l) wrote to issuers in August 2017 outlining NSX's and ASIC's expectations on periodic financial disclosures.

59 The independent third-party review will determine the extent to which these and other changes are successfully implemented, and their effectiveness.

## Appendix: Good practice listing standards

- 60 Listings standards are critical to the integrity of the Australian equities market, and the trust and confidence investors have in it.
- 61 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.
- 62 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

- 63 *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.
- 64 *Viability:* The entity can demonstrate sufficient working capital is available to achieve the business objectives stated in the capital raising for listing.
- 65 *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.
- 66 *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.
- 67 *Genuine secondary market liquidity:* The entity can demonstrate genuine and robust investor interest at the point of listing.
- 68 *Compliance listings:* The only circumstances where it may be appropriate for an entity to not produce a regulated disclosure document are where the entity is not raising capital upon listing and:
- (a) the securities for which listing is sought are already listed on an appropriate securities exchange. An appropriate securities exchange is an Australian securities exchange or a foreign securities exchange listed in [ASIC Corporations \(Approved Foreign Financial Markets\) Instrument 2015/1071](#); or

- (b) the securities for which listing is sought are distributed in specie to shareholders of an issuer who is already listed on an appropriate securities exchange as part of a reconstruction (including a reorganisation of a listed stapled structure) or demerger transaction; or
- (c) the entity is a holding company formed as part of a reorganisation transaction and its securities are issued in exchange for those of one or more issuers listed on an appropriate securities exchange.

### Principles for ongoing obligations

- 69 *Disclosure:* The listing rules require timely, clear and complete disclosure to investors of information material to the price of a listed entity's securities.
- 70 *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.
- 71 *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.
- 72 *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.
- 73 *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

- 74 *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.

75 *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.

76 *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**

77 *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.

78 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 changes in the operating environment, and deal with them in a timely and effective manner.

- 79 *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) meaningful statistics that demonstrate the monitoring and enforcement activities and relevant outcomes, and publish these in order to promote investor confidence and deter misconduct.

### **Principles for approach and culture**

- 80 *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.
- 81 *Characteristics of approach:* The approach by the market operator is characterised by an emphasis on decision making, and exercising 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.
- 82 *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 8 August 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
emerging market	A jurisdiction in Eastern Europe, Asia and the Pacific (excluding Singapore, Hong Kong, Japan and New Zealand), Africa, South America, Mexico, Central America, the Caribbean or the Middle East
JORC Code	A professional code of practice that sets minimum standards for public reporting of minerals exploration results, mineral resources and ore reserves
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 operator (or market licensee)	The operator of a financial market. A market operator may be referred to as a 'market licensee' where they are the holder of an Australian market licence
nominated adviser	A person approved by NSX as a nominated adviser, whose role is to assist issuers with the NSX listing procedure and compliance with ongoing obligations under NSX's rules
NSX	National Stock Exchange of Australia Limited or the exchange market operated by NSX  Note: NSX was formerly known as Stock Exchange of Newcastle Limited.
NSXL	NSX Limited—the parent company of NSX. It is listed on the Australian Securities Exchange
REP 480	An ASIC report (in this example numbered 480)
s794C	A section of the Corporations Act (in this example numbered 794C), unless otherwise specified