



Practice Note #11

Foreign Entities

Issued:
22 June 2004

Qualifications

The Stock Exchange of Newcastle Limited (NSX) issues practice notes to promote commercial certainty, reduce costs to business and assist market participants, and we are available to discuss any questions you have in relation to a practice note.

NSX may replace practice notes at any time. Issuers should contact NSX to ensure that they have the latest version of a practice note. As a practice note is only a guide to NSX practice, issuers are advised to contact NSX to discuss their particular circumstances and the application of the listing rules. NSX cannot give legal advice to issuers and recommends that they consider taking advice from a qualified professional person.

Practice Note History

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FOREIGN ENTITIES

Introduction

The Stock Exchange of Newcastle Limited (NSX) is able to receive applications from Entities that do not conduct business activities in Australia. This practice note outlines the requirements to be met by Foreign Entities seeking a listing on the NSX market.

The practice note is not a substitute for the company seeking its own professional advice as there may be differences in each and every case as to the ultimate requirements for listing, adhering to the NSX Rules, adhering to the ASTC rules and the Australia Corporations Act that the entity needs to fully consider.

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Exempt Foreign Listing vs NSX Listing

The NSX rules do not recognise a distinction between Exempt Foreign Listing Status and a Full NSX Listing status. In some cases it is possible that an applicant finds it difficult to comply with a particular listing rule because of the regulatory framework within its home country jurisdiction. In these cases the NSX recommends discussion before application is made and the lodgment of a waiver to a particular rule if required. Exemptions from specific listing rules can only be made by way of a written waiver to the NSX Compliance and Audit Committee.

Admission requirements

To be admitted to an NSX Listing the foreign entity must meet the requirements set out in Chapter 4 of Sections 2A, 2B and 2C of the NSX Listing rules depending on the securities to be listed. Also if the entity is a company it must be registered as a foreign company under the Australian Corporations Act. The entity must supply NSX with its ASIC issued ARBN.

The entity must comply with NSX Listing and Business rules as a listed entity irrespective of whether that entity is listed on another stock exchange.

There is no requirement for a minimum number of Australian resident shareholders, directors or officers of the entity.

Admission procedures follow standard NSX procedures for listing of securities.

Communications with NSX, ASIC and ASTC

The entity must maintain Australian resident representation to accept responsibility for issues raised by NSX, ASTC and ASIC with in a timely fashion.

The Australian Corporations Act also requires the appointment of a local agent. Appointment of an agent on this basis would satisfy NSX's listing requirements.

Disclosure (Continuous and Periodic)

Section 323DA of the Corporations Act 2001 requires NSX listed entities which file information with overseas markets must also disclose that information with the NSX on the *next business day*.

The entity must provide to NSX, in English, all information it provides to its overseas home exchange, if listed, or otherwise if it is making the information public.

The company would need to abide by the NSX continuous disclosure and periodic disclosure regimes as governed by the Corporations Act and Chapter 6 of Sections 2A, 2B and 2C of the NSX Listing Rules.

All disclosures must be electronically lodged with the NSX.

The entity may need to report financial information in a dual language if English is not the language of administration in its home country.

The applicable accounting standards are Australian Standards or International Standards. The NSX in its discretion may also accept the following accounting standards: New Zealand, Singapore, Hong Kong, UK, USA and Canada or other countries on application. From 2005, NSX would require adherence to international accounting standards being introduced from 2005.

Auditing standards should also be Australian or International Standards or as otherwise may be acceptable to the NSX on application.

The entity would need to have staff or maintain a relationship with suitably qualified advisers to ensure that NSX's ongoing reporting requirements are met.

Where NSX considers it necessary to ensure that the NSX market trades on a fully informed basis the NSX may require additional disclosure by the entity. This may entail monthly NTA reports if appropriate to the entity or also monthly or quarterly investment reports about its activities.

The timetables with the NSX Rules for disclosure of periodic information should be followed as closely as possible with allowance made for the financial year end date of the entity.

After discussion with the entity, the NSX may require additional information is disclosed to the market before the entity is listed. Such information may entail previous financial reports (annual and half yearly), prospectus or other offer documents, the entities letter of application, constitution or other documentation that the NSX views would enhance disclosure about the entity.

The NSX would still require adherence to notification of substantial shareholder notifications and director's interest notifications.

CHESS and Share Transfers

The NSX requires that the entities securities are registerable in CHESS.

The entity must comply with ASTC Rules regarding CHESS transfers and have appropriate sections incorporated into its constitution.

The entity must create and maintain a securities register (or subregister), or a register of depository receipts.

The entity must appoint an Australian resident share registry to facilitate electronic share transfers.

In the case where an entity is established in a jurisdiction whose laws have the effect that CHESS cannot be used for holding legal title to its securities, depository instruments can be used that allow transactions in those securities of these entities to be cleared and settled through CHESS. These instruments are called CDIs (CHESS Depository Interests). The entity must have CDIs issued over its securities if the security holder asks for CDIs to be used.

Constitution

The constitution must be consistent with both the laws in the place where it is established and with the NSX Listing rules.

As far as possible, the entity's constitution must be consistent with the Australian Corporations Act.

It is up to the entity to identify any differences between the requirements in its jurisdiction for its constitution and Australian requirements when it applies for listing.

Offer Documents

Entities raising capital within the Australian jurisdiction must have an appropriate offer document that has been lodged with ASIC and is compliant with the Australian Corporations Act, Chapter 6D.

NSX does not review draft prospectuses or offer documents, but will consider information of a more general nature such as background material or information before a prospectus is registered with the Australian Securities and Investments Commission. The information contained in an offer document is governed by the Corporations Act, not by NSX.

Before approving a listing application, the NSX will review the application to ascertain that it complies with the NSX Rules and that enough information has been provided about the entity to allow trading of its securities on a fully informed basis. The NSX may require additional information to be disclosed to the market before trading can commence.

Australian Corporations Act

Provisions of the Corporations Act including notification of substantial holdings and takeovers do not apply to entities established outside of Australia. However if the holding company of the foreign entity is registered in Australia the NSX expects the entity to provide the same information as required under the Corporations Act in order to maintain an informed market. Foreign entities should also include statements of place of incorporation or registration (if not Australia), that it may not be subject to Chapters 6, 6A, 6B and 6C of the Corporations Act and any limitations on acquisition of its securities imposed by the jurisdiction in which it is incorporated or registered.

Restricted Securities (Escrow)

The NSX may require some securities to be restricted securities. Discussions should be held with the NSX to determine if securities are to be restricted.

Governing Law and external regulatory environments

The Governing Law would be New South Wales, Australia.

If applicable, the entity must have the necessary approval from its domestic regulatory jurisdiction that domestic securities can be listed on a foreign exchange.

Professional Advice

The Foreign Entity must still appoint a sponsoring broker and Nominated Adviser.

At all times the NSX recommends that the Foreign Entity obtain appropriate professional advice its listing status by consulting its Nominated Adviser and other professionals as required.

Fees, Charges & Taxes

The prescribed fees must be paid in advance of application and quotation of securities. All fees are to be paid in Australian dollars and include Goods and Services Tax. Full disclosure of NSX Fees & Charges can be found in "*Practice Note #1: Listing Fees*"

Further Information

More information can be obtained from:

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