

# Chapter 2 — Quotation

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## Quotation of securities on admission

Listing Rule 2.1 — Main class of securities (ASX Listing) and debt securities (ASX Debt Listing) .....	[2.1]
Listing Rule 2.2 — ASX Foreign Exempt Listing .....	[2.2]
Listing Rule 2.3 — Quotation of other classes of securities on admission .....	[2.3]

## Quotation of securities after admission

Listing Rule 2.4 — Obligation to apply for quotation of additional securities .....	[2.4]
Listing Rule 2.5 — Requirements for quotation of additional securities .	[2.5]
Listing Rule 2.6 — Fees for quotation of additional securities .....	[2.6]
Listing Rule 2.7 — Applying for quotation of additional securities ...	[2.7]
Listing Rules 2.8–2.8.3 — Time limits for applying .....	[2.8]

## Rules that apply to all securities

Listing Rule 2.9 — ASX's discretion concerning quotation .....	[2.9]
Listing Rule 2.10 — How and when quotation occurs .....	[2.10]
Listing Rule 2.11 — Re-quotation of forfeited shares .....	[2.11]
Listing Rules 2.12–2.13 — No quotation of restricted securities during escrow period .....	[2.12]
Listing Rule 2.14 — Rules that apply in CHESSE .....	[2.14]
Listing Rule 2.15 — Quotation of partly paid shares in NL company .	[2.15]
Listing Rule 2.16 — CDIs .....	[2.16]

[The next page is 0]

# Quotation of securities on admission

## **[2.1] Listing Rule 2.1 — Main class of securities (ASX Listing) and debt securities (ASX Debt Listing)**

### **[2.1.A] General principle and ASX policy**

An entity applying for admission to ASX Listing or ASX Debt Listing must apply for and be granted quotation of all securities in the class for which it is seeking quotation. For admission to ASX Listing, this must be the “main class” of the entity’s securities. (The “main class” of securities is defined in LR 19.12 to mean the ordinary securities of the entity or the class of securities as designated by ASX).

Listing Rule 2.1 sets out the additional requirements which must be satisfied in order for the entity’s securities to be granted quotation upon admission of the entity to listing. These conditions do not apply to the quotation of securities under a Foreign Exempt Listing, because the principle of a Foreign Exempt Listing is that (with certain exemptions), the regulation of the entity and its securities is largely left to the rules of the entity’s “home exchange” in another jurisdiction.

#### **[2.1.A.10] Condition 1**

Chapter 6 does not apply to debt securities and therefore this Condition effectively only applies to equity securities (including units in a managed investment scheme) quoted under an ASX listing. Chapter 6 is primarily concerned with ensuring that the terms of issue of quoted equity securities are “appropriate and equitable” as between investors. It regulates matters such as voting and distribution rights, divestment of securities, preferential rights granted to some securities and rights of option holders: see paras [6.1]\* to [6.24]\* for notes on Ch 6 of the Listing Rules.

#### **[2.1.A.20] Condition 2**

The requirement that an entity’s quoted securities be issued or sold for not less than 20 cents each is consistent with the principle that a listed entity must be of a minimum size and quality and it also helps to ensure market integrity by reducing the risk of volatility which can be associated with shares that trade at very low prices. Without this Condition, an entity could issue (or offer for sale) in an IPO a large number of securities at a very small issue price. Upon commencement of trading a small incremental change in price (eg plus or minus 1 cent) could result in a very large percentage change in the entity’s market capitalisation. This condition seeks (at least initially) to introduce some limit on that type of price volatility. It does not impose a continuing floor on the trading price (notwithstanding the use of the word “sell” in the Condition, as this is intended only to refer to an initial sale of securities into an IPO).

This also corresponds with Condition 11 in LR 1.1 that the exercise price of any options must be at least 20 cents: see para [1.1.A.110] for notes on LR 1.1, Condition 11.

In December 2007, ASX proposed that this condition (and the corresponding condition for options) be removed. As at June 2011, this proposal has not been implemented: see para [2.1.D] for notes on Omnibus Listing Rule Amendments — ASX Public Consultation Paper — December 2007.

The restriction does not apply to “restricted securities” and securities issued under an “employee incentive scheme”. In the case of restricted securities, this recognises that the

restricted securities may have been issued to a vendor or promoter at a discount to the IPO issue price: see paras [9.1]\* to [9.23]\* for notes on restricted securities under Ch 9.

In the case of employee incentive schemes the Condition recognises that securities may be issued to employees either at a discount to the IPO issue price or may be priced by reference to the market price of the securities at a later date: see paras [10.14]\* to [10.15]\* for notes on the circumstances in which employee incentive schemes must be approved by security holders under Ch 10.

ASX has granted waivers of this Condition for stapled securities and where foreign listed entities are seeking a secondary listing as an ASX Listing: see para [2.1.B.20] for waivers of LR 2.1, Condition 2.

It is important to note that there is no requirement under the Listing Rules for an entity to issue all of the securities offered under an IPO at the same price, provided the price of all securities in its main class complies with the 20 cent minimum price Condition (and the corresponding Condition in relation to options referred to above).

Examples of where the issue price may differ are:

- retail investors may subscribe at a different price to institutional investors;
- existing shareholders or customers of the business may be issued with shares at a discount;
- employees may be issued with shares at a discount; and
- where the pricing for institutional investors is determined by way of a “book build” the effective price paid by some institutional investors may be lower than the announced book build price because of concessionary fee arrangements or fixed offer arrangements for some of the securities.

A “book build” is where the lead manager or underwriter of an IPO or secondary issue of securities will seek bids for both price and volume of securities from institutional investors within a stated price range and will determine the ultimate issue price based upon the information about investor demand obtained from the book build.

Whilst none of these arrangements are prohibited by ASX, in Guidance Note 1, ASX has indicated that there needs to be full disclosure of differential pricing arrangements, so that there has been:

“Timely disclosure . . . of information which may affect security values or influence investment decisions, and information in which security holders, investors and ASX have a legitimate interest.”

ASX Guidance Note 1, paras 19–37 provides further guidance in relation to the disclosure of pricing information in book builds.

See para [2.1.C.20] for notes on the Corporations Act and ASIC requirements relating to the issue price of shares and trust units.

### **[2.1.A.30] Condition 3**

In order for an entity’s securities to be quoted and traded on ASX, transactions in securities must be able to be completed by payment or delivery of securities. Completion of transactions on the ASX market is effected through the electronic “clearing and settlement facility” which has been approved for this purpose. In an uncertificated trading and settlement system it is necessary for the securities which are issued to be compatible with the requirements for electronic trading (eg for there to be no restrictions on transfers under the terms of issue). This Condition reflects that imperative.

Clearing and settlement facilities must be licensed under the Corporations Act and approved by ASX. The primary clearing and settlement facility is provided by the ASX subsidiaries ASX Clear Pty Ltd and ASX Settlement Pty Ltd, but it is possible that, in future, alternative clearing and settlement facilities may be established for this purpose.

The Listing Rules use the expression “approved CS facility” which is a defined term under LR 19.12. The electronic clearing and settlement facility provided by the ASX subsidiaries ASX Clear Pty Ltd and ASX Settlement Pty Ltd is referred to as the “CHESS” system, which stands for the “Clearing House Electronic Settlement System” (see definition of “CHESS” in LR 19.12); see para [0.20.A] for notes on the licensing of clearing and settlement facilities under the Corporations Act.

A security holder may choose to register its legal title to securities on either:

- the CHESS Subregister, which is maintained by ASX Settlement Pty Ltd and to which certain brokers are given access; or
- an Issuer Sponsored Subregister, which is maintained by the entity issuing the securities and is usually administered by the entity’s share register.

Registration by both means is electronic and no share certificates are issued, although transfers whilst securities are registered on the Issuer Sponsored Subregister require the lodgement of a standard transfer form.

A registration under the CHESS Subregister will be identified by a “Holder identification Number” (HIN), whilst a registration under the Issuer Sponsored Subregister will be identified by a “Shareholder Registration Number” (SRN).

One HIN can register an investor’s interest in multiple entities, whilst a SRN registers a holder’s interest in one entity only, thus an investor investing in multiple entities will have multiple SRNs.

It is recognised that foreign entities seeking admission to ASX Listing may, under the laws of their home jurisdiction, not be able to have their main class of securities directly approved under the rules of an electronic clearing and settlement facility such as CHESS. This may be, for example, because the laws of the entity’s home jurisdiction require the delivery of a paper certificate of title with any transfer of its securities. This Condition therefore does not apply to such entities and ASX has provided a mechanism whereby alternative electronically tradeable instruments may instead be quoted on ASX, leaving the need for paper transfers of the underlying primary securities unaffected. These instruments are referred to as “CHESS Depository Instruments” or “CDIs” (see definition of CDIs in LR 19.12).

A foreign entity that wishes to have its securities traded on-market through ASX will need to issue CDI’s, and will generally do so at the time of seeking admission to listing.

It should be noted that LR 2.1, Condition 3 does not impose a direct obligation on a foreign entity to issue CDI’s in these circumstances. It could be possible for a foreign entity to apply for ASX Listing (as a secondary listing and quotation on ASX), on the basis that all of its securities are traded either in its home jurisdiction or traded off-market in Australia through its “issuer sponsored sub-register”. However, in practice, a foreign entity whose shares cannot be cleared and settled electronically will usually need to issue CDI’s, because:

- a foreign entity is required to have an Australian securities register anyway, which can be a CDI register (see LR 1.1 Condition 4); and
- a foreign entity in that situation is obliged to issue and seek quotation of CDIs if any holder of its securities requests it to do so (see LR 2.16 below).

In Guidance Note 5, ASX has indicated that legal title to securities of entities incorporated in Australia, New Zealand, Papua New Guinea and Bermuda may be held on CHESS.

See para [2.16.A] for notes on CHESS Depository Instruments.

See para [1.1.A.40] for notes on LR 1.1, Condition 4 and see para [2.16.A] for notes on LR 2.16.

ASX has granted waivers to permit domestic entities admitted under ASX Debt Listing to quote debt securities on ASX, where the debt securities would be traded and settled outside of CHESS. This has commonly been the case for the quotation of securities issued by a special purpose entity (eg a securitisation entity) which has been established to issue wholesale debt securities or asset backed debt securities. In these cases the listing on ASX is primarily for informational and compliance purposes, rather than for the purpose of the debt securities being traded on-market through ASX.

See para [2.1.A.30] for waivers of LR 2.1, Condition 3.

See para [1.8.A] for notes on LR 1.8 and the requirements for admission under ASX Debt Listing.

**[2.1.A.40] Condition 4**

Partly-paid securities are, as the name suggests, securities which are issued on the basis that only part of the subscription price of the security is paid up-front. They can either be partly-paid shares (in the case of a listed company) or partly-paid units (in the case of a listed managed investment scheme or “unit trust”). In either case, the holder of the securities has an obligation to the company or to the trustee to pay the outstanding amounts when called for. If the company is a “no liability company”, there is no obligation to pay the outstanding amounts, but the shares may be forfeited if amounts are not paid: see para [2.1.C.40] for notes on the legal basis of the obligation under partly paid shares and trust units to pay outstanding amounts.

This Condition seeks to promote transparency and fairness between investors by requiring:

- a defined call program setting out the date and amount of each call;
- that only one extension of the call program (by up to 6 months) may be made; and
- that a “mining entity” (as defined in LR 19.12) cannot have a call program extending beyond 2 years.

A listed entity may have either quoted partly-paid securities or unquoted partly-paid securities (if those shares or units are not its “main class” of securities). Partly-paid debt securities under an ASX Debt Listing are not common, but this condition does apply to partly-paid debt securities as well as partly-paid shares and trust units.

In 2009, some retail investors who had acquired partly-paid securities in a listed stapled group claimed that they were not aware that there were further amounts owing under the partly-paid securities. Because the stapled securities were trading at very low prices, the investors were able to acquire a very large number of securities on-market, resulting in substantial amounts being owed by the retail investors under the call program. As a result of the controversy which this generated, on 6 April 2009 ASX announced that it would introduce a market rule requiring brokers to alert retail clients of the need to inform themselves of the rights and obligations associated with trading partly-paid securities: see para [2.1.D] for notes on ASX Media Release 6 April 2009 — New Rule for Trading Partly Paid Securities.

**[2.1.A.50] Condition 5**

An entity which is seeking only ASX Debt listing must give ASX a copy of the documents which set out the terms of the debt securities.

Unlike LR 1.8, Condition 5 (where ASX has indicated that debt securities and convertible debt securities must have a trust deed under LR 2.1), this Condition makes it clear that a trust deed will only be required by ASX where the Corporations Act requires it (ie where the debt securities are for issue to retail investors): see para [2.1.C.50] for notes on the circumstances in which a trust deed for debt securities will be required.

Note this Condition is also expressed to apply to “convertible debt securities”. An ASX Debt Issuer must only be seeking quotation of “debt securities” (as defined in LR 19.12) and this generally excludes debt securities which are convertible into shares or units, unless ASX agrees to classify them as debt securities. As a result, the application of this Condition to “convertible debt securities” will be unusual, presumably only applying in those circumstances where either:

- the “main class” of quoted securities under an ASX Listing is convertible debt securities instead of ordinary shares or ordinary units; or
- ASX has agreed to classify the convertible securities as debt securities so they can be issued under an ASX Debt Listing.

**[2.1.A.60] Condition 6**

The requirement for an ASX Debt Issuer to initially quote securities with an aggregate face value of \$10 million is a separate and distinct requirement from the modified assets test (\$10 million in net tangible assets) which may be used for admission to ASX Debt Listing in LR 1.8, Condition 3, para (a). This is because, unlike an issue of equity securities, an issue of debt securities is unlikely to contribute significantly to the entity’s net assets, unless the money raised can be reinvested in assets of a significantly higher value.

An ASX Debt Issuer which initially quotes only \$10 million in face value of debt securities would need to qualify for admission under LR 1.8, Condition 3, by either:

- having other assets sufficient to satisfy the modified net tangible assets test; or
- by seeking to qualify under one of the alternate tests in LR 1.8, Condition 3 of either having a guarantor with the minimum net tangible assets, or having a minimum rating of “investment grade” for its debt securities.

See para [1.8.A.30] for a notes on LR 1.8, Condition 3.

Note, this Condition does not apply to subsequent issues of debt securities.

**[2.1.B] ASX waivers****[2.1.B.10] Condition 1**

There are no relevant ASX waivers for the period 2006–11.

**[2.1.B.20] Condition 2**

- ASX has granted waivers to permit issuers of stapled securities to comply with Condition 2 by reference to the issue price of the stapled securities, rather than the individual trust units or shares which make up the stapled securities.

See waivers: WLC100035-003 MACQUARIE ATLAS ROADS GROUP (2010); WLC100387-003 WESTFIELD RETAIL TRUST (2010); WLC090327-003 ORCHARD INDUSTRIAL PROPERTY FUND (2009); WLC090586-003 ASTRO JAPAN PROPERTY GROUP (2009); WLC070341-003 APN/UKA EUROPEAN RETAIL TRUST (2007); WLC070306-003 PRIMELIFE CORPORATION LIMITED (2007); WLC070300-003 HEDLEY LEISURE AND GAMING PROPERTY FUND (2007); WLC060111-003 MFS DIVERSIFIED GROUP (2006); WLC100387-003 WESTFIELD RETAIL TRUST (2006); WLC080206-003 BRISCONNECTIONS UNIT TRUSTS (2006); WLC080003-003 COMPASS HOTEL GROUP (2006); WLC060079-003 MACQUARIE MEDIA GROUP (2006); WLC070264-003 DUET GROUP (2006); WLC070235-002 TRANSFIELD SERVICES INFRASTRUCTURE FUND (2006); WLC070050-003 ING REAL ESTATE COMMUNITY LIVING FUND GROUP (2006); WLC070038-004 TRANSURBAN GROUP (2006); WLC070021-003 APT INVESTMENT

TRUST (2006); WLC060250-003 SYDNEY ROADS GROUP (2006); WLC060201-003 BABCOCK & BROWN RESIDENTIAL LAND PARTNERS GROUP (2006); WLC060161-003 CHEVIOT KIRRIBILLY VINEYARD PROPERTY GROUP (2006).

- ASX has also granted a similar waiver to permit an issuer of stapled securities to comply with Condition 2 by reference to the issue price of the stapled securities, where the combined issue price would be less than 20c but on condition that the stapled securities would have a combined trading price of at least 20c upon quotation.

See waiver: WLC060071-003 ABACUS PROPERTY GROUP (2006).

- ASX has also granted waivers of the minimum issue price requirement to foreign incorporated entities which are not raising additional funds and the quotation of securities on ASX represents a dual listing of securities already listed on a foreign exchange.

See waivers: WLC090637-001 SKYWEST AIRLINES LTD (2009); WLC080131-002 INTERRA RESOURCES LIMITED (2007).

### [2.1.B.30] Condition 3

- ASX has granted waivers to allow quoted debt securities to be cleared and settled outside of CHESSE where ASX is satisfied with the alternative settlement arrangements that exist in relation to the debt securities (usually this will be because clearing and settlement of transfers between wholesale investors occurs through Austraclear).

The most common situation where these waivers have been granted is where special purpose securitisation entities are admitted to ASX Debt listing.

See waivers: WLC100040-001 SERIES 2009-1 WST TRUST (2010); WLC100055-001 SMART SERIES 2009-1 TRUST (2010); WLC100072-001 BELLA TRUST SERIES 2009-1 (2010); WLC100083-001 PROGRESS 2010-1 TRUST (2010);

WLC100130-001 SERIES 2010-1 REDS TRUST (2010); WLC100162-001 TORRENS SERIES 2010-1 TRUST (2010); WLC100216-001 APOLLO SERIES 2010-1 TRUST (2010); WLC100271-001 TORRENS SERIES 2010-2 TRUST (2010); WLC100288-001 BELLA TRUST SERIES 2010-1 (2010); WLC100329-001 PUMA MASTERFUND P-16 (2010); WLC100328-001 PUMA MASTERFUND S-8 (2010); WLC100339-001 SERIES 2010-2 REDS TRUST (2010);

WLC090057-001 CHALLENGER MILLENNIUM SERIES 2008-2 TRUST (2009); WLC080347-001 SMART SERIES 20082 (2008); WLC080339-001 CHALLENGER MILLENNIUM SERIES 20081 (2008); WLC080273-001 PUMA MASTERFUND S7 (2008); WLC080263-001 CRUSADE ABS SERIES 20082 (2008); WLC080230-001 SERIES 2008-1E EHP REDS TRUST (2008); WLC080228-001 PUMA MASTERFUND S6 (2008); WLC080218-001 FIRSTMAC MORTGAGE FUNDING TRUST SERIES 12007 (2008); WLC080178-001 SECURITISED AUSTRALIAN MORTGAGE TRUST 20081 (2008); WLC080125-001 CRUSADE ABS SERIES 20081 (2008); WLC080082-001 SMART SERIES 2007-3E (2008); WLC080062-001 FIRSTMAC BOND SERIES 1C-2006 TRUST (2008); WLC080025-001 RAMS MORTGAGE SECURITIES TRUST SERIES 2007-3.(2008).



- Another situation where these waivers have been granted is for the issue of wholesale debt securities by banks, financiers and other wholesale fundraising entities (again, where clearing and settlement of transfers between wholesale investors occurs through Austraclear).

See waivers: WLC100209-002 INDUSTRIAL BANK OF KOREA (2010); WLC090008-001 ING BANK (AUSTRALIA) LIMITED (2009); WLC080384-002 INTERNATIONAL FINANCE CORPORATION (2008); WLC070144-002 AXA (2007); WLC070079-002 PROVINCE OF ONTARIO (2007); WLC070043-002 AB SVENSK EXPORTKREDIT (2006); WLC060138-001 LEASEPLAN AUSTRALIA LIMITED (2006); WLC060109-001 HBOS TREASURY SERVICES PLC (2006); WLC060097-001 NIBC BANK N.V. (2006); WLC060069-001 HYPO REAL ESTATE BANK INTERNATIONAL AKTIENGESELLSCHAFT (2006).

**[2.1.B.40] Condition 4**

- There are no relevant ASX waivers for the period 2006–11.

**[2.1.B.50] Condition 5**

- There are no relevant ASX waivers for the period 2006–11.

**[2.1.B.60] Condition 6**

- There are no relevant ASX waivers for the period 2006–11.

**[2.1.C] Legislation and ASIC policy**

**[2.1.C.10] Condition 1**

There is no relevant legislation or ASIC policy.

**[2.1.C.20] Condition 2**

As shares are no longer required to have a “par value” in Australia (see s 254C, Corporations Act), a company can essentially issue its shares at any price it chooses, subject to any provisions in its Constitution which limit this. Section 254B(1)(a) of the Act specifies that a company may determine “the terms on which its shares are issued”. In practice, a listed company which proposes to issue quoted securities will be constrained in determining the issue price by an expectation of whether its shares will be taken at the price offered and the price at which the shares will trade following quotation. A company will not want to issue shares at a price that is unattractive to investors or which will be seen to be significantly above the trading price for the securities.

By contrast, the price at which a trust (registered managed investment scheme) can issue units is constrained by the requirement in s 601GA(1)(a) of the Act for the trust constitution to “make adequate provision for the consideration which is paid to acquire an interest in the scheme”. In Regulatory Guide 134 at para [RG 134.19] ASIC has indicated that, in its view, “adequate provision” has only been made when a trust constitution provides for an independently verifiable issue price for the units. However, ASIC has given relief from the effect of this section under ASIC Class Order [CO 98/52] in a number of situations, provided that: (a) for commercial reasons, the consideration to acquire cannot be determined independently; and (b) investor protection will not be reduced.

**[2.1.C.30] Condition 3**

Part 7.11 of the Corporations Act (and the corresponding provisions in Pt 7.11 of the Corporations Regulations, provides the legal framework by which title to securities and transfer of securities is validated under the operating rules of the CHESSE system. See in particular s 1070A which states that:

*'a share, other interest of a member in a company or interest of a person in a registered scheme:*

- (a) is personal property;*
- (b) is transferable or transmissible as provided by:*
  - (i) the company's or the scheme's constitution; or*
  - (ii) the operating rules of a prescribed CS facility if they are applicable; and*
- (c) is capable of devolution by will or by operation of law.'*

These provisions override any common law principles which would otherwise apply to the ownership and transfer of securities of Australian companies or trusts and which might otherwise hinder the electronic transfer of their securities on ASX markets. It does not affect any law which applies to the transfer of securities of a foreign company, as Pt 7.11 only applies to "companies", which does not include foreign companies (see definition of 'company' in s 9 of the Act).

**[2.1.C.40] Condition 4**

The legal obligation of a holder of partly-paid securities to make outstanding payments arises differently depending on whether the securities are shares or trust units.

In the case of shares in an Australian company (other than a no liability company), the obligation to pay derives from s 254M of the Act which makes the holder of the partly-paid shares liable to pay the outstanding amounts to the company in accordance with the terms on which the shares are issued.

In the case of shares in a "no liability company" (ie a company which has been established on the basis that the shareholders have no liability to contribute to capital on a winding up), there is no obligation to pay outstanding amounts called. However, if a call is not paid, the shares are forfeited and must be offered for sale by public auction, but may be redeemed before the sale by paying the amounts outstanding plus expenses if required (ss 254Q–254R, Corporations Act). There are special rules for the making of calls on partly-paid shares in no liability companies (s 254P, Corporations Act).

In the case of trust units in a managed investment scheme, the obligation to pay outstanding amounts derives from the provisions of the trust constitution, which takes the form of a legally enforceable Trust Deed between the trustee ("responsible entity") and the holders of trust units. Under s 601GB, the constitution of a managed investment scheme is required to be contained in a document which is legally enforceable.

**[2.1.C.50] Condition 5**

The issue of debt securities by a body corporate or an unincorporated body is regulated by Ch 2L of the Act, if the debt securities are "debentures" as defined in s 9 of the Act. A "debenture" is generally any undertaking to repay money as a debt other than:

- ordinary borrowings by an operating business from a bank or other financier; and
- certain other defined exclusions, including debt instruments issued by Australian banks and other Australian "Authorised Deposit Taking Institutions" (ADIs).

Therefore, for the purpose of the Listing Rules, most debt securities which are quoted on ASX (other than those issued by Australian banks and other ADIs) will be debentures as they will have been specifically issued for the purpose of raising debt capital from either retail or wholesale investors.

If an entity issues debentures which will ultimately be offered to retail investors (either because of a direct offer to retail investors, or by way of an indirect offer through a wholesale distribution arrangement to retail investors), then the entity will be required to appoint a trustee for debenture holders and to have a regulated trust deed under s 238AA of the Act. (Note, the reference in LR 2.1, Condition 5 to s 260FA of the Act should now be a reference to s 238AA).

An entity which is required to have a trust deed for its debentures will also have other obligations and potential liability under Ch 2L of the Act.

This will generally only be the case where the entity is required under Ch 6D of the Act to prepare a prospectus for the offer of the debt securities to retail investors, but it can also extend to some other situations where the entity issues the debt securities originally to wholesale investors under a placement and is not required to prepare a prospectus (ie where the on-sale to retail investors is exempted from prospectus disclosure under s 708A of the Act).

**[2.1.C.60] Condition 6**

There is no relevant legislation or ASIC policy.

**[2.1.D] Further References**

• ***Omnibus Listing Rule Amendments — ASX Public Consultation paper — 14 December 2007***

At pp 24–6 of the Consultation Paper, ASX discusses the original reasons for the inclusion (in 1971) of the 20 cent minimum price condition and the reasons why ASX considers it should be removed, including that:

- many of the original reasons for its inclusion are now less important or mitigated by market changes (for example low priced shares can now trade in minimum increments of 0.1 cent); and
- the fact that there is no on-going floor on the price of subsequent issues or trading prices on ASX means that the effectiveness of the condition in promoting higher share price denominations on a sustained basis is very poor.

ASX noted that, as at September 2007, 31% of ASX listed companies were trading at less than 20 cents.

• ***ASX media release 6 April 2009 New Rule for Trading Partly Paid Securities***

On 6 April 2009, ASX announced that it would introduce a market rule requiring brokers to alert retail clients of the need to inform themselves of the rights and obligations associated with trading partly paid securities.

The new market rules took effect from 1 May 2009. Under the new rules Market Participants of ASX (brokers) are required to obtain from retail clients a signed agreement that their clients are aware they have a responsibility to obtain and read a copy of a prospectus, PDS or information memorandum produced by the product issuer when they are entering into a transaction to buy a partly-paid security for the first time.

The rule does not apply to partly-paid securities in No Liability companies, because holders of partly-paid securities in No Liability companies are not legally obliged to make a further payment.

**[2.2] Listing Rule 2.2 — ASX Foreign Exempt Listing**

**[2.2.A] General principle and ASX policy**

The only condition imposed on initial quotation of securities of an entity admitted under ASX Foreign Exempt Listing is that it must satisfy the requirements of the clearing and settlement facility for ASX quoted securities. This does not apply if the effect of the laws of its home jurisdiction is that its securities cannot trade electronically or there is another reason why its securities cannot be approved for clearing and settlement. This is the same Condition as is imposed on a foreign entity seeking full ASX Listing, as set out in LR 2.1, Condition 3: see para [2.1.A.30] for notes on the requirements in LR 2.1,

Condition 3 for foreign entities to have their securities approved for clearing and settlement under the CHESSE clearing and settlement system.

### **[2.3] Listing Rule 2.3 — Quotation of other classes of securities on admission**

#### **[2.3.A] General principle and ASX policy**

Listing Rule 2.3 makes it clear that the requirements in LRs 2.1 and 2.2 only apply to the “main class” of securities being quoted at the time of admission.

Quotation of additional classes of securities at the time of admission, must comply with the quotation requirements that apply to any securities to be quoted following admission as set out in LRs 2.4–2.8: see paras [2.4.A]–[2.8.A] for notes on LRs 2.4–2.8.

# Quotation of securities after admission

## **[2.4] Listing Rule 2.4 — Obligation to apply for quotation of additional securities**

### **[2.4.A] General principle and ASX policy**

Once an entity is admitted to listing, it must apply for quotation of any new securities which are in the same class as a class of securities which is already quoted. This will include both its “main class” of securities and any secondary class of securities which is quoted, either at the time of admission or later.

The rationale for this Condition is similar to that for LR 1.1, Condition 6 (an entity is required to apply for quotation of all of the securities in its main class) and is consistent with the ASX requirement for transparency and an orderly market in an entity’s quoted securities. By contrast, if ASX permitted only some of an entity’s securities in an existing class of securities to be quoted:

- there could potentially be two markets for the entity’s securities, a regulated market for the quoted securities and a relatively unregulated market for the unquoted securities in the same class; and
- as regards ordinary securities in the “main class” it could also be difficult for investors to form a view as to the value of the entity’s quoted securities, where the reporting to the market is made on a whole of enterprise basis, yet only a portion of the value of the enterprise is represented by the entity’s quoted securities.

See para [1.1.A.60] for notes on LR 1.1, Condition 6.

ASX has been prepared to grant a waiver to this requirement for foreign issuers, where the securities are also quoted on foreign financial market. This is similar to the waivers granted in relation to LR 1.1, Condition 6. ASX has also granted waivers in special circumstances where the quotation of a particular parcel of securities in the main class was not appropriate.

Quotation of “restricted securities” and securities issued under an employee incentive scheme where there is a restriction on transfer is not appropriate whilst a restriction applies as quoted shares must (with some specific exceptions) be freely transferrable. Securities in this category need to be quoted in accordance with the timeframe set out in LR 2.8 instead. A note to this Rule states that an entity may choose to apply for quotation of securities issued under an employee incentive scheme at the time of issue instead of waiting for the restriction to expire, but quotation will still be conditional on any restriction on transfer ceasing to apply: see para [2.8.A] for notes on LR 2.8.

An entity admitted under ASX Foreign Exempt Listing is exempt from this requirement.

### **[2.4.B] ASX waivers**

- ASX has granted waivers of the requirement to have all securities in an existing class quoted, where a foreign entity admitted to ASX Listing already has an existing listing in a foreign jurisdiction and is seeking a secondary listing on ASX through the issue of CDIs. Because only some of its securities will be

represented by CDIs, it is not appropriate to require all securities in the class to be quoted on ASX. In these circumstances, ASX has required that the entity apply for quotation of CDI's on a monthly basis and provide monthly updates to the market to ensure transparency and certainty as to the pool of securities available for trading on ASX.

See waivers: WLC110040-004 ANATOLIA MINERALS DEVELOPMENT LIMITED (2011); WLC100020-004 UNILIFE CORPORATION (2010); WLC090655-001 GUINNESS PEAT GROUP PLC (2009); WLC080346-001 RESMED INC. (2008); WLC080142-002 CALEDON RESOURCES PLC (2008).

- ASX has also granted a waiver of the requirement to have all securities in an existing class quoted, in the case of unusual securities structures where the quotation of a particular parcel of securities in the main class was not appropriate, for example:
  - where a foreign entity has a significant block of its securities held by majority owned subsidiaries ('hook stock') where the hook stock is not immediately tradeable, on condition that the entity applies for quotation of the securities if the entities holding the securities cease to be majority owned subsidiaries (see waiver: WLC070221-001 NEWS CORPORATION (2007));
  - where a residual number of units in a trust (not a significant proportion of units) were held by a company which was to have its securities stapled to the trust units, on the basis that these units would not be transferred out of the company and did not have any rights to be stapled to the company's shares (see waiver: WLC060410-003 CROMWELL GROUP (2006)); and
  - where a number of securities were to be issued by a company to its future parent company for funding purposes, prior to a merger by way of scheme of arrangement, where capital was required prior to and after implementation of the merger and the company's shares were not to be reinstated to quotation as the merger was already effective (see waiver: WLC090012-003 ST GEORGE BANK LIMITED (2008)).
- Demonstrating the difficulties that not quoting all securities in a class on ASX can cause, a waiver to permit a foreign entity to not quote all its securities has been revoked by ASX at the request of the entity, because of the entity's own concerns about ongoing confusion relating to the entity's liquidity and stock market capitalisation.

See waiver: WLC090349-001 RESMED INC (2009).

## **[2.5] Listing Rule 2.5 — Requirements for quotation of additional securities**

### **[2.5.A] General principle and ASX policy**

Similar to quotation of securities on admission, this Rule applies conditions and restrictions on the quotation of additional securities after an entity has been listed. Listing Rule 2.5 does not apply to the quotation of additional securities in the entity's "main class" as these securities are already governed by the requirements in LR 2.1.

Listing Rule 2.5 does not apply to an entity admitted under ASX Foreign Exempt Listing.

#### **[2.5.A.10] Condition 1**

This is the same as LR 2.1, Condition 1 and imposes an obligation to comply with Ch 6 for any further issue of quoted securities. Again, Ch 6 does not apply to debt securities

(except for convertible debt securities) and therefore this Condition essentially only applies to equity securities (including units in a managed investment scheme) quoted by an entity admitted to ASX listing.

It is important to note that, although LR 2.4 applies only to securities which are to be quoted on ASX, Ch 6 applies more broadly and regulates the issue of any securities (whether quoted or unquoted) by an entity, once it has been admitted to ASX Listing: see para [2.1.A.10] for notes on LR 2.1, Condition 1 and see para [6.1]\* for notes on Chapter 6 — Securities.

**[2.5.A.20] Condition 2**

This Condition is similar to the condition imposed on admission to listing under LR 1.1, Condition 9 where restricted securities are issued before admission and ties in with the provisions in Ch 9 of the Listing Rules relating to restricted securities.

Chapter 9 does not apply to entities admitted to ASX Debt listing: see para [9.1.A]\* for notes on Ch 9 (restricted securities) and see para [9.1.D]\* for notes on ASX Guidance Note 11 on Restricted Securities.

**[2.5.A.30] Condition 3**

There is no Condition 3.

**[2.5.A.40] Condition 4**

This Condition imposes the same requirements in relation to the quotation of partly-paid securities following admission to listing as apply to partly-paid securities quoted at the time of admission to ASX Listing or ASX Debt Listing under LR 2.1, Condition 4: see para [2.1.A.40] for notes on LR 2.1, Condition 4.

**[2.5.A.50] Condition 5**

This Condition imposes the same requirements in relation to the quotation of debt securities or convertible debt securities following admission to listing as apply to securities quoted at the time of admission to ASX Listing or ASX Debt Listing under LR 2.1, Condition 5: see para [2.1.A.50] for notes on LR 2.1, Condition 5.

**[2.5.A.60] Condition 6**

There is a modified “spread” requirement (100,000 securities held by 50 holders each with a “marketable parcel”) for additional securities to be quoted following admission to listing. As with the spread requirement which applies on listing under LR 1.1, Condition 7, the intention is to ensure that there is sufficient investor interest in the new securities for them to be quoted. Unlike LR 1.1, Condition 7, in addition to each holding of securities having a minimum value, a minimum number of securities in total must be issued.

The spread requirement does not apply if either:

- the new securities are in the same class as fully paid ordinary securities (shares or trust units) and there are at least 1 million ordinary securities on issue; or
- the securities are a class of partly paid securities, there are at least 1 million securities and certain conditions as to the uncalled amount owing are satisfied.

Since LR 2.5 only applies where the new securities are not in the entity’s “main class”, the exception for fully paid ordinary securities will only be relevant where the entity’s main class quoted upon admission to listing is other than ordinary securities. This will be rare.

A “marketable parcel” is defined in LR 19.12 and in practical terms is \$500 of securities based on the closing price on the day the securities are quoted. This means that an issuer will need to include a buffer in the number of securities issued to each holder to

guard against a significant reduction in the trading price on the day of quotation, (or seek a waiver from ASX): see para [19.12.A]\* for notes on the definition of “marketable parcel” under LR 19.12.

**[2.5.A.70] Condition 7**

There is no Condition 7.

**[2.5.A.80] Condition 8**

There is no Condition 8.

**[2.5.A.90] Condition 9**

If an entity has been required under LR 2.1, Condition 3 to have its securities approved under the operating rules of the CHESSE clearing and settlement facility, then any new issues of securities in a different class must also be approved under the operating rules of CHESSE. This applies to both domestic and foreign entities which have been admitted to ASX Listing.

There is provision for the operator of CHESSE (ASX Settlement Pty Ltd) to decide that a new issue of securities does not need to be approved for clearing and settlement under CHESSE.

Because LR 2.5 does not apply to a foreign entity admitted to ASX Foreign Exempt listing, further issues of quoted securities by such an entity are not required to be approved for clearing and settlement in CHESSE, even if the entity’s main class of securities is required to be approved for clearing and settlement in CHESSE (ie because LR 2.2 applies).

If a foreign entity issues a new class of quoted securities and chooses not to have CDI’s quoted on ASX in lieu of the underlying securities, then its quoted securities would not be able to be cleared and settled on-market through CHESSE and could only be traded off-market through the entity’s “issuer sponsored” sub-register. However, the entity will still be subject to LR 2.16 which will require the entity to issue CDIs if any holder requests it to do so. So, in practice a foreign entity may be better off either having its securities approved directly for participation in CHESSE or, if this is not possible, issuing CDIs: see para [2.1.A.30] for notes on the requirement in LR 2.1, Condition 3 for foreign entities to have their securities approved for clearing and settlement under CHESSE clearing and settlement system.

**[2.5.A.100] Condition 10**

Secondary options are options issued upon the exercise of other options (usually referred to as a “primary option”). Upon exercising the primary option and subscribing for securities, the holder will then become entitled to an option to subscribe for further securities, exercisable up to a later date. Secondary options have mainly been used by mining exploration entities to provide an incentive to existing option holders to exercise their options earlier than they otherwise may have done, by effectively extending the original option period once capital has been committed under the primary option. Whilst ASX does not generally impose any restriction on the issue and exercise dates of unquoted primary and secondary options, this Condition is designed to ensure that, if secondary options are to be quoted, there is no overlap with any primary options remaining to be exercised. Otherwise there could be uncertainty about whether more secondary options could be quoted at a later date, which could reduce price transparency for the existing quoted secondary options.

(This condition will apply whether or not the primary options are quoted).



**[2.5.B] ASX waivers****[2.5.B.10] Condition 1**

- There are no relevant ASX waivers for the period 2006–11.

**[2.5.B.20] Condition 2**

- There are no relevant ASX waivers for the period 2006–11.

**[2.5.B.30] Condition 3**

- There are no relevant ASX waivers for the period 2006–11.

**[2.5.B.40] Condition 4**

- ASX has granted a waiver to permit the terms of partly-paid securities to provide for a final call to be cancelled if the ordinary shares do not reach a defined trading threshold and shareholder approval has been given for cancellation of the call, provided that at least 2 months notice of the final call date is given to partly-paid security holders (see waiver: WLC070020-002 ANSEARCH LIMITED (2006));
- ASX has granted a waiver to permit a company to extend the remaining call dates of its partly-paid securities to a date no later than 6 months after the current call payable dates, on condition that the company immediately announces its revised call program to the market (see waiver: WLC060345-001 SOLAGRAN LIMITED (2006)).

**[2.5.B.50] Condition 5**

- There are no relevant ASX waivers for the period 2006–11.

**[2.5.B.60] Condition 6**

- ASX has granted a waiver to permit an existing listed company to issue a new class of stapled security consisting of a note stapled to a reset convertible preference share where there are at least 50 holders holding parcels of the stapled securities having a value of at least \$500, notwithstanding that the value of either or both the notes or the preference shares constituting the stapled securities is less than \$500 (see waiver: WLC060051-001 ORICA LIMITED (2006)).

**[2.5.B.70] Condition 7**

- There are no relevant ASX waivers for the period 2006–11.

**[2.5.B.80] Condition 8**

- There are no relevant ASX waivers for the period 2006–11.

**[2.5.B.90] Condition 9**

- There are no relevant ASX waivers for the period 2006–11.

**[2.5.B.100] Condition 10**

- There are no relevant ASX waivers for the period 2006–11.

**[2.6] Listing Rule 2.6 — Fees for quotation of additional securities****[2.6.A] General principle and ASX policy**

The relevant ASX fees for the quotation of additional securities are set out in Guidance Note 15 and Guidance Note 15A. Guidance Note 15 explains the differences between the types of fees payable by an entity, namely, initial listing fees (payable at listing), annual listing fees (payable each year) and subsequent listing fees (payable on quotation of

additional securities) and the basis for calculation of the fees, whilst Guidance note 15A sets out the fees payable depending on the circumstance.

The lodgment of an App 3B would usually require a subsequent listing fee, as an entity would usually be applying for quotation of additional securities.

Guidance Note 15A sets out that the minimum fee payable for the quotation of additional securities is \$1,500. It also sets out a table of fees with a sliding scale based on the value of the securities in which quotation is sought.

ASX will send an invoice to the entity once the number of securities and price is known.

See para [16.1]\* for notes in relation to Ch 16 (Fees): see para [15.11.A]\* for notes on Guidance Note 15 and Guidance Note 15A.

## **[2.7] Listing Rule 2.7 — Applying for quotation of additional securities**

### **[2.7.A] General principle and ASX policy**

For quotation of securities at the time of admission of an entity to ASX Listing, ASX Debt Listing or ASX Foreign Exempt Listing, the entity usually provides information sufficient to support the application for quotation in the ASX Listing Application (App 1A, 1B or 1C as appropriate).

For quotation of securities following admission to Listing, an entity has to complete App 3B, which operates both as:

- an application to ASX for quotation of the new securities; and
- a notification to ASX of the new issue which satisfies the continuous disclosure requirement in LR 3.10.3 and 3.10.5 to notify ASX of new issues of securities (whether or not the new securities are to be quoted).

See para [3.10.A]\* for notes on LR 3.10 and the requirement to notify ASX of new issues of securities.

See para [2.8.A] for notes on LR 2.8 and the time limits in which an entity must apply for quotation.

The requirement under LR 2.7 for an applicant to complete App 3B serves two primary purposes:

1. to collect the information needed to establish that the entity has satisfied the Conditions for quotation of the securities set out in LR 2.5; and
2. to create a contract (in the form of a Deed) between the entity and ASX which underpins the entity's continuing compliance with the Listing Rules and protects ASX from any third party claims which may arise from a breach by the entity: see para [0.1.A] for notes on how the Listing Rules take effect as a contract only and generally do not create direct rights or obligations under the Corporations Act.

The information required by App 3B falls into the following broad categories:

- information about the securities to be quoted;
- in the case of securities issued pursuant to a “pro rata issue” or a “bonus issue”, information about the circumstances relating to the issue, including underwriters, fees and commissions, how entitlements are traded and security holder approvals;
- information about the entity's capital structure (other than the securities to be quoted); and
- information about the distribution of security holders following issue of the new securities.

Similar to the Listing Agreement, App 3B also includes a “Quotation Agreement” between the entity and ASX (although not in the form of a Deed), which has three main objectives:

- to confirm ASX’s discretion in granting quotation of the new securities and ASX’s ability to impose conditions on quotation;
- to have the entity confirm that there is nothing which would restrict the secondary trading of its quoted securities and that the issue of securities complies with the law and is not for an illegal purpose; and
- to have the entity indemnify ASX in relation to any claim, action or expense arising from the confirmations regarding secondary trading and compliance with the law being incorrect or if any documents provided to ASX are not true and complete.

ASX Guidance Note 17 provides further information on the application process and consultation with ASX in relation to applications for quotation of new securities and applications for waivers.

See para [18.10.A]\* for notes on the ASX Guidance Note to the ASX Disciplinary procedures and Appeals Rulebook in relation to appeals from decisions of ASX in relation to admission.

See para [1.1.C.60] for notes on ASIC Regulatory Guide 99 — Quotation of securities offered by prospectus and timing for the quotation application.

## **[2.8] Listing Rules 2.8–2.8.3 — Time limits for applying**

### **[2.8.A] General principle and ASX policy**

Listing Rule 2.8 imposes time limits for applying for quotation of new or varied securities, including where quotation is required by the Listing Rules (eg because the new securities are the same as in an existing quoted class). It provides timeframes for quotation in three circumstances:

- Where there is an existing timetable under Ch 6 or Ch 7 which involves quotation of the new securities, the quotation application must be submitted as follows:
  - In accordance with App 6A which sets out detailed timetables for the making of calls on partly paid shares and for the conversion of convertible securities. In each timetable there is a specification of when the issuer must apply for quotation of the fully paid securities or the converted securities.
  - In accordance with App 7A which sets out detailed timetables for “pro rata issues” and “bonus issues” and reconstructions of capital which involve the issue of new securities. Again, in some timetables, there is a specification of when the issuer must apply for quotation of the new securities.
- Where quotation of the original securities has been delayed because the securities are:
  - restricted securities;
  - unquoted partly-paid securities which become the same class as existing quoted securities once they are fully paid; and
  - securities under an employee incentive scheme with restrictions on transfer (although in this case ASX may agree to provide for less frequent quotation);

application for quotation of the securities must be made within 10 days from the end of the relevant restriction; and

- In all other cases, application for quotation must be made within 10 business days after final allotment of the new securities.

**[2.8.B] ASX waivers**

- ASX has granted waivers where a foreign entity's securities will be progressively quoted on ASX through CDIs, to allow the application for quotation of additional CDIs to be made on a monthly basis, rather than within 10 business days of the issue of the CDIs.

See waivers: WLC110040-005 ANATOLIA MINERALS DEVELOPMENT LIMITED (2011); WLC100020-005 UNILIFE CORPORATION (2010); WLC090655-001 GUINNESS PEAT GROUP PLC (2009); WLC080346-002 RESMED INC. (2008).

(See also waiver: WLC090349-002 RESMED INC. (2009) where the company requested revocation of previous waivers to allow the company to not have all of its securities quoted as CDIs).

**[2.8.C] Legislation and ASIC policy**

If securities are offered under a prospectus, and the prospectus states or implies that the securities will be able to trade on ASX, s 723(3) of the Corporations Act requires that:

- the entity make an application to ASX for quotation of those securities within 7 days of the prospectus; and
- the securities be quoted within 3 months after the date of the prospectus.

If either of these events does not occur, then the issue of securities is void and any application monies received by the entity must be returned to the applicant.

Section 1016D(2) of the Act imposes a similar requirement in relation to the issue and quotation of trust units offered by way of a PDS where the PDS states or implies that the trust units will be able to trade on ASX.

Due to this 7 day requirement, and the possibility that an entity may not know the exact number of securities or trust units that will ultimately be quoted until close of the offer under the prospectus or PDS, it is usual practice in such a situation for an entity to submit a 'draft' App 3B to ASX within 7 days of the date of the prospectus. This 'draft' App 3B would usually set out the maximum number of securities or trust units that could be issued under the prospectus or PDS.

Once the final number of securities or trust units to be quoted is known, the entity would then submit a final App 3B in accordance with the time requirements under LR 2.8 (usually 10 days from allotment).

This practice is supported by paragraph 6 of ASX Guidance Note 1, which states that when an entity is applying for quotation it should apply for the maximum number of securities that can be quoted.

If an entity misses the 7 day requirement to apply for quotation of the securities, s 1322(4) of the Corporations Act allows the entity to apply to the court to correct the irregularity.

# Rules that apply to all securities

## **[2.9] Listing Rule 2.9 — ASX’s discretion concerning quotation**

### **[2.9.A] General principle and ASX policy**

This Rule supports ASX’s discretion in administering the Listing Rules and establishes ASX’s right to impose conditions on quotation in its absolute discretion. (ASX will impose conditions relating to additional disclosure post-quotation where it considers this to be necessary for an informed market): see para [1.1.A.10] for notes on the exercise of ASX’s discretion and the application of the principles on which the Listing Rules are based.

See para [2.7.A] for notes on the application for quotation of new securities in the form of App 3B where the entity seeking admission enters into a contract with ASX to comply with the Listing Rules.

See ASX Guidance Notes 1 and 17 in relation to the exercise of ASX discretions.

## **[2.10] Listing Rule 2.10 — How and when quotation occurs**

### **[2.10.A] General principle and ASX policy**

In deciding the date on which quotation will commence, ASX will, among other things, have regard to whether the market is fully informed and whether security holders have an equal opportunity to participate in the market. This is indicated by ASX in a Note to LR 2.10, where ASX also indicates that the date of quotation will usually be 3 business days after holding statements have been sent to holders. If there is likely to be a delay in sending holding statements, ASX will usually delay quotation.

The reference in the Note to delaying quotation where a “cooling off period” applies should not generally be necessary now, given that Corporations Regulation 7.9.64(1) provides that the cooling-off period does not apply where the PDS for the issue of the trust units states that the units will be quoted on ASX.

## **[2.11] Listing Rule 2.11 — Re-quotation of forfeited shares**

### **[2.11.A] General principle and ASX policy**

Listing Rule 2.11 generally only applies in the case of partly-paid securities where calls have not been paid and shares have been forfeited at which time the shares cease to be quoted. In these situations, the shares may return to quotation either where:

- the security holder pays the call before the shares are sold and redeems the shares (if this is permitted); or
- the forfeited shares are sold to a third party by the issuer, on the basis that they will be fully paid after the sale.

## **[2.12] Listing Rules 2.12–2.13 — No quotation of restricted securities during escrow period**

### **[2.12.A] General principle and ASX policy**

Because restricted securities cannot trade during the “escrow period”, it would not be appropriate for the securities to be quoted on ASX during this period.

Accordingly, at the time of admission ASX will only quote the securities which are not subject to escrow and would usually require a written confirmation from the entity's registry confirming that the registry will not release the restricted securities from escrow until ASX has provided its written confirmation that it can do so.

On the subsequent release of the escrowed securities, the entity is required to tell ASX of the forthcoming release pursuant to LR 3.10A. This must be done not less than 10 business days before the end of the escrow period. As the securities will not be quoted, the entity will also need to submit an App 3B applying for quotation of the formerly restricted securities.

See para [3.10A.A]\* for notes on LR 3.10A in relation to announcements about the notification of forthcoming release of restricted securities and securities subject to voluntary escrow.

Listing Rule 2.12 ties in with LR 2.4 which exempts restricted securities from the requirement that all securities in a class of quoted securities be quoted. There is no LR 2.13.

See para [9.1.A]\* for notes on Ch 9 (restricted securities) and see para [9.1.D]\* for notes on ASX Guidance Note 11 on Restricted Securities.

#### **[2.12.B] Further References**

- ASX Guidance Note 11 (Restricted Securities).

### **[2.14] Listing Rule 2.14 — Rules that apply in CHES**

#### **[2.14.A] General principle and ASX policy**

There is no LR 2.14.

### **[2.15] Listing Rule 2.15 — Quotation of partly paid shares in NL company**

#### **[2.15.A] General principle and ASX policy**

As "no liability" companies are relatively unrestricted in the terms on which they can issue partly-paid shares, ASX restricts these entities to having only one class of partly paid shares quoted.

Listing Rule 2.1, Condition 4 and LR 2.5, Condition 4 set out the requirements which otherwise apply to the quotation of partly-paid securities: see paras [2.1.A.40] and [2.5.A.40] for notes on the requirements in LR 2.1, Condition 4 and LR 2.5, Condition 4 respectively relating to quotation of partly-paid securities.

### **[2.16] Listing Rule 2.16 — CDIs**

#### **[2.16.A] General principle and ASX policy**

A foreign entity admitted to ASX Listing or ASX Foreign Exempt Listing is not required to have its securities approved for participation in the CHES clearing and settlement system, where the laws of its home jurisdiction prevent it. However, LR 2.16 provides that where a holder of its securities asks for CDIs, the entity must issue the holder with CDIs (which can be approved for participation in the CHES clearing and settlement system).

As a result, in practice, a foreign entity may be better off either having its securities approved directly for participation in CHES or, if this is not possible, issuing CDIs.

CDIs are units of beneficial ownership (as opposed to legal ownership) in foreign securities held by an Australian depository entity, such as CHESSE Depository Nominees Pty Ltd (CDN) which is a subsidiary of ASX.

Legal title to the securities is held by the Australian depository entity, whilst beneficial title is held by the investor in whose name the CDIs are registered.

CDI holders generally have the same rights to the underlying securities as if those securities were held directly. The main exception to this is for voting arrangements (in which the CDI holder has to direct the depository entity to cast proxy votes and the CDI holder cannot personally vote at a meeting of security holders).

CDIs are usually structured so that one CDI represents one security in the foreign entity. This is different from depository receipts where the purpose of the depository receipt can be to consolidate a number of underlying securities into one depository receipt.

This Rule also ties in with LR 2.1, Condition 3 and LR 2.5, Condition 9: see paras [2.1.A.30] and [2.5.A.90] for notes on the requirement in LR 2.1, Condition 3 and LR 2.5, Condition 9 respectively for foreign entities to have their securities approved for clearing and settlement under the CHESSE clearing and settlement system and relevant exceptions.

ASX Guidance Note 5 provides guidance on how CHESSE and CDIs operate and explains the requirements for CHESSE participation by foreign companies, core differences between holding CDIs and holding securities, corporate actions, and the process for converting CDIs to its underlying securities.

**[2.16.B] Further References**

- ASX Guidance Note 5 — CHESSE Depository Interests.

