

ASX releases updated version of Guidance Note 33 for removal of entities from the Official List

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The Australian Securities Exchange (**ASX**) has released a revised version of Guidance Note 33 *Removal of Entities from the ASX Official List (GN 33)*. Changes to GN 33 include the following important amendments:

- shortening the deadline to remove an entity from the Official List if their securities have been suspended from trading for a considerable period; and
- deferring the date when this change will come into effect, from 1 July 2019 to 3 February 2020.

Shortening of period for automatic removal from the Official List

The former version of GN 33 established that ASX's policy was to remove an entity from the Official List whose securities have been suspended from trading for a continuous period of three years. The former version also came with the possibility of a short-term deadline extension if the entity could demonstrate (to ASX's satisfaction) that it was in the final stages of implementing a transaction that would lead to the resumption of trading in its securities.

In the revised version of GN 33, ASX has shortened this period from three years to two years, but has retained the possibility of a short extension if the entity proves to be in the final stages of implementing a transaction that will lead to the resumption of trading in its securities.

In addition, the new version of GN 33 incorporates a new cause for removal of an entity from the Official List where the entity has failed to lodge any of the documents referred to in Listing Rule 17.5 (including annual, half-year and periodic reports) for a continuous period of one year after the deadline for lodgement of that document.

This addition is in support of the ASX's view that, if an entity has failed to lodge the required documents for more than a year, then they may well be seeking to either conceal important financial information or are close to insolvency. In either case, the entity should not remain on the Official List.

It should not be forgotten that under Listing Rule 17.8, failure to lodge documents may be rectified and ASX may reinstate quotation if they receive the documents and any fees that are payable (prior to a removal from the Official List).

Effective date of changes

Feedback on the consultation paper raised concerns surrounding the short time frame in which the new GN 33 would apply, particularly where entities had already been suspended for, or close to, two years.

In response, ASX advised that changes to the period of time for automatic removal following suspension (section 3.4 of GN 33) have been deferred and will take effect on Monday 3 February 2020, rather than on 1 July 2019, the date originally proposed. This change was intended to allow currently suspended entities more time to pursue a transaction that could lead to them being reinstated to trading.

Where an entity has been continuously suspended since on or before 31 January 2018 and remains suspended as at the close of trading on Friday 31 January 2020 (2 year period), the entity will be automatically removed from the Official List at the commencement of trading on Monday 3 February 2020.

Additionally, if an entity has not filed a document or report which is referred to in Listing Rule 17.5 on or before 31 January 2019 (where it was due on or before that date) and has failed to rectify that breach by the close of trading on Friday 31 January 2020 (one year period) the entity will be automatically removed from the Official List at the commencement of trading on Monday 3 February 2020.

ASX may grant short extensions in certain circumstances for entities that have been continuously suspended for two years and are in the final stages of implementing a transaction that will lead to a resumption of trading in its securities. This will only be considered by ASX where:

- the entity has announced the relevant transaction to the market;
- signed definitive legal agreements;
- issued a prospectus or PDS (as needed); and
- obtained approval by security holders or other third parties (as needed) prior to the end of the relevant period.

Any extension granted will usually be for no more than three months.

Removing an entity from the Official List even if not suspended

ASX has also confirmed their position that it may act to remove an entity from the Official List even if the entity has not been suspended for the abovementioned periods, indicating some cases in which ASX may exercise these powers.

Recommendations

Entities that fall within the categories outlined above have less than nine months to rectify their situation, whether lodging the pending documents and paying any fees payable (according to ASX Listing Rule 17.8) or implementing a transaction that leads to resumption of trading of securities. Such entities should proactively be taking steps to identify opportunities to rectify reporting and fee breaches as well as possible transactions that may lead them to being reinstated to trading by 31 January 2020.

For more information or discussion, please contact a member of HopgoodGanim Lawyers' [Corporate Advisory and Governance](#) team.

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