

Waivers

Practice Note 4

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Listing Rule Waivers and Procedures

Practice Note 4

The purpose of this Practice Note This practice note is designed to assist entities and their advisers in understanding how the NSX deals with listing matters, including the policies and procedures that are adopted in dealing with listing applications and the granting of Listing Rule Waivers.

- The main points**
1. Decision making process
 2. Listing rule waivers
 3. Submission of materials for consideration
 4. 'In principle' advice
 5. Quotation of additional securities
 6. Suspension and reinstatement of quotation
 7. Appeals process
 8. Publication of waiver register
 9. Initial information required as part of the waiver request
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- Related materials**
- NSX Listing Rules
 - NSX Practice Note 20: Suitability for listing
 - NSX Practice Note 21: Suspended Issuers
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Guidance

The 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.



Section 1 – Decision making process

1. Questions concerning Listing Applications and waivers for new issuers should be directed to the Head of Admissions. Questions for the quotation of additional securities, trading halts, suspensions, reinstatements and removals for existing Issuers should be addressed to the Head of Market Operations.
2. Waiver applications should be addressed to the Chairman, Compliance Committee and sent via email as provided below. The NSX verifies the application for waiver and discusses any discrepancies with the applicant. Once the waiver application is all in order, it is presented to the NSX Compliance Committee for review.
3. The NSX Compliance Committee will discuss the waiver application, seek more information about the waiver application, grant waivers requested as part of the application, grant additional waivers, if required, and entertain presentations by the Issuer to further explain their application.
4. In some instances, a waiver may be deemed not to be necessary, but that approval of a use of a rule and its interpretation is required either from the Listing and Admissions Committee or the Compliance Committee.
5. The Compliance Committee will meet as soon as practicable after receipt by the Committee of a new waiver application.
6. The new applicants will be formally notified by the Head of Admissions as to the outcome of its waiver application. Existing Issuers will be formally notified by the Head of Market Operations.
7. The decision in granting waivers is at the absolute discretion of the exchange.

Section 2 – Listing Rule waivers

1. The NSX Compliance Committee has the power to waive listing rules on application.

Section 3 – Submission of material for consideration

1. In order for a matter or proposal to be considered, materials in support of the matter or proposal need to be provided to the Compliance Committee in advance so that they can be reviewed and a recommendation prepared. If a decision is required within a certain timeframe, the entity should consult with NSX so that the Compliance Committee will have sufficient time to consider the matter and a recommendation prepared.
2. In preparing a waiver application, the onus is on the entity to establish that there is sufficient commercial and policy justification to waive a listing rule and that a waiver of the rule will not have adverse policy implications.



Section 4 – ‘In principle’ advice

1. In appropriate cases, for example, where there is an unusual structure of an applicant Issuer or significant waiver of the rules may be required, NSX may be prepared to give ‘in principle’ advice on the position it is likely to take on a matter.
2. The entity should consult with the NSX in the first instance about the need for ‘in principle’ advice from the Compliance Committee or a formal waiver application.

Section 5 – Quotation of additional securities

1. Application must be made to the NSX for the quotation of additional securities and lodged as an announcement in the required form.
2. The NSX may refuse to list additional securities or refuse a waiver in support of additional securities where it has been determined that the quotation of those securities would not produce a fair, orderly or transparent market or has been made in a breach of the rules or the Corporations Act.

Section 6 – Suspensions and reinstatement to quotation

1. Decisions about suspensions and reinstatements to quotation are made as required once the Issuer has fulfilled the conditions required by NSX for reinstatement.
2. These decisions can usually be made by NSX management but in complex cases the decision will be referred to the Compliance Committee for review.
3. Issuers should make application for a waiver if they require that a Listing Rule or Condition be waived so as to allow the Issuer’s securities to be reinstated to quotation.

Section 7 – Appeals process

1. An entity has the right to appeal a decision. All appeals must be presented to the NSX Compliance Committee. The NSX Compliance Committee hears appeals from an entity on various listings decisions that affect it. The decisions on which an appeal is available to an entity will include:
 - a) Refusal to admit that entity to the official list, or the conditions of admission;
 - b) Refusal to quote the securities of that entity, or the conditions of quotation;
 - c) Refusal to grant a waiver to that entity, or the conditions of a waiver;
 - d) The application of the Listing Rules to that entity (except in relation to a suspension); and



- e) Removal of that entity from the official list.
2. Appeals must be made in writing, by the entity only, within 14 days of the decision being received by the entity. The submission can include submissions from related third parties such as a Nominated Adviser. The Compliance Committee reviews the newly provided information as a complete review and a new determination is given. The Compliance Committee does not review whether the previous decision was incorrect or not.
3. The timing of meetings and submissions will vary in any particular case.
4. Where an entity fails to lodge any written submissions in support of the appeal or fails to advise the NSX that it does not propose to make any written submissions within the timeframe stipulated in the letter sent to the entity, the appeal will be treated as being withdrawn.
5. Committee members are to be provided with a list of associated parties prior to an appeal being heard and are asked to advise of any conflicts. If a Committee member has a conflict of interest, that member will not sit on the Committee that hears the appeal unless the interest is disclosed and both NSX and the entity consent. If a Committee member discovers that they have a conflict of interest while in attendance at the appeal, that Committee member will withdraw from the appeal hearing and will not participate in the deliberations unless both NSX and the entity consent to the member's continuing participation. As a matter of policy, NSX does not provide details of Committee members. This is to ensure impartiality of decision making.
6. The Compliance Committee may request the presence of representatives from the entity, as they deem appropriate.

Section 8 – Publication of waivers

To maintain transparency of all waivers given, a register is maintained of each waiver which includes the following information:

1. Listing Rule;
2. Listing Rule Section Number;
3. Description of Listing Rule Affected;
4. Description of Waiver Requested;
5. Effect on Listing Rule of Waiver;
6. Which Entity Requested the Waiver;
7. Which Securities are affected by the Waiver;
8. Date Waiver was requested; and
9. Date Waiver was approved by the Listing Committee.

The Register of Waivers is published on the NSX Website at the following location:

<https://www.nsx.com.au/regulation/companies/waivers/>.



Section 9 – Initial required information

1. As a minimum, the NSX requires that the following information be provided as part of any waiver application.

Applicant Name and Contact Details	
Issuer	
Security Codes this waiver applies to	
Affected Listing Rule Number(s)	
Description of Listing Rule(s)	
Description of actual Waiver Requested	
Possible Effects on the rules and practice if the waiver is granted	

Section 10 – Further Information

1. Further information can be obtained by contacting:

Head of Market Operations or Head of Admissions

National Stock Exchange of Australia

Phone: +61 (2) 8378 6400

Email: trading@nsx.com.au (existing Issuers) or getlisted@nsx.com.au (new Issuers)