

Suspended Securities

Practice Note 21

Issued: 2021



Suspended Securities

Practice Note #21

The purpose of this Practice Note

This practice note assists listed Issuers to meet their obligation to comply with the listing rules even if quotation of the Issuer's securities is suspended as Section 1, Listing Rules 2.6, 2.18, 2.19, 2.20, 2.21 and 2.22.

This Practice Note does not relate to the imposition of Trading Halts.

The main points

- Overview
 - Monitoring Suspended Securities
 - Continuous and Periodic Disclosure Obligations
 - Suspension and Cancellation of Listing
 - Reinstatement to Official Quotation
 - Ongoing obligations following removal from official quotation
 - Example process to relist
 - Further information
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Related materials

- Practice Note 6 Continuous Disclosure
 - Practice Note 9 Periodic Disclosure
 - Practice Note 20 Suitability for Listing
 - Practice Note 1 Fees
 - NSX Listing Rules
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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 – Overview

1. The following Practice Note applies to any Issuer's securities that have been suspended from quotation. It does not apply to any of the Issuer's securities that have been placed under Trading Halt.
2. The length of time that an Issuer's securities have been suspended for, and the reason as to why the suspension was applied, will impact the course of action taken by the Exchange.
3. If an Issuer's securities are suspended for greater than 6 months, the suspension will be classified as a long-term suspension. The Issuer will need to ensure compliance with the following areas in order to have their securities re-instated to quotation:
 - a) Section 3 - Continuous and Periodic Disclosure Obligations¹;
 - b) Section 4 - Suspension and Cancellation of Listing²; and
 - c) Section 5 - Reinstatement to Official Quotation³.
4. If the securities are suspended for a period less than 6 months, the suspension will be classified as a short-term suspension. Issuers will need to ensure they read, understand and comply with the following areas of the Practice Note and the Listing Rules in order to have their securities re-instated to quotation:
 - a) Section 3 - Continuous and Periodic Disclosure Obligations; and
 - b) Section 5 - Reinstatement to Official Quotation.
5. Should an Issuer's securities be suspended as a result of an investigation that has been or is being conducted by the Exchange, notification will be provided to the Issuer and the market as to the circumstances of the suspension⁴.
6. Issuers are reminded that no matter what the cause of the suspension of the Issuer's securities, the Issuer is required to comply with their obligations under the Listing Rules including payment of outstanding fees, holding of shareholder meetings, continuous disclosure and periodic disclosure obligations and timely communication with the Exchange, at all times.

¹ Requirement under Listing Rule Section 1, Listing Rule 2.6

² Requirement under Listing Rule Section 1, Rule 2.18

³ Requirement under Listing Rules Section 1, Rule 2.21

⁴ The investigation or information available may have led the Exchange to a determination that the Issuer and its securities are no longer suitable for listing as per Listing Rule Section 1, Rule 2.18.



Section 2 – Monitoring suspended securities

1. The Exchange monitors all Issuers that have been admitted to the Official List on the market to ensure compliance with the Listing Rules, including Issuers that have securities which are suspended⁵.
2. The Exchange monitors the suspended securities and Issuer disclosure to ensure compliance with the Listing Rules are adhered to, as well as informing management, the Issuer's board and committees on a regular basis of any changes to the status of the Issuers.
3. If Issuers do not comply with their obligations under the Listing Rules they may be subject to disciplinary action, censure, fine or removal of their admission to the Official List (See Sections 3 and 4 below).

Section 3 – Continuous and Periodic Disclosure Obligations

1. Listing entities must comply with the continuous and periodic disclosure obligations under the Listing Rules. These obligations continue to apply to all listed entities even whilst suspended.
2. Issuers whose securities have been suspended for a period of six months or more will be expected to implement a monthly disclosure system. This is to ensure that the Issuer's security holders and the market are provided with regular updates on the Issuer's status, steps being taken by the Issuer to ensure trading in its securities resumes, and estimated the time frame by which the Issuer aims to have successfully completed those steps, subject to approval by the Exchange.
3. An Issuer that repeatedly fails to meet its obligations under the Listing Rule Section 2 Chapter 6 (for example, disclosure of Annual Financial Reports, Half-Yearly Financial Reports and meetings) may have its listing cancelled by the Exchange under Listing Rule Section 1 Rule 2.18.

Section 4 – Suspension and Cancellation of Listing

1. Listing Rule 2.18 states: *"Listing is always granted subject to the condition that where the Exchange considers it necessary for the protection of investors or the maintenance of an orderly market, it may at any time suspend trading in any securities or cancel the listing of any securities in such circumstances and subject to such conditions as it thinks fit, whether requested by the Issuer or not. The Exchange may do so where:*
 - a) an Issuer fails, in a manner which the Exchange considers material, to comply with the Listing Rules or its Issuer's Undertaking (including a failure to pay on time any fees or levies due to the Exchange);

⁵ For the obligation to comply while the securities are suspended refer to Listing Rules Section 1, Rule 2.6.



- b) *the Exchange considers there are insufficient securities of the Issuer in the hands of the public;*
 - c) *the Exchange considers that the Issuer does not have a sufficient level of operations or sufficient assets to warrant the continued listing of its securities on the Exchange; or*
 - d) *the Exchange considers that the Issuer or its business is no longer suitable for listing.”*
2. Notwithstanding the above, if an Issuer is suspended for two years or more, the Issuer may be removed from the Official List. The removal will typically take effect from the open of trading on the first trading day after the expiration of that period, or as determined by the Exchange.

Section 5 – Reinstatement to Official Quotation

1. Section 1, Listing Rule 2.21 governs the procedure for lifting the suspension of a listed Issuer.
2. Section 1, Listing Rule 2.21 states: *“Where trading has been suspended, the procedure for lifting the suspension will depend on the circumstances and the Exchange reserves the right to impose such conditions as it considers appropriate. Where a suspension is made at the Issuer’s request, the Issuer will be required to announce the reason for the suspension and, where appropriate, the anticipated timing of the lifting of the suspension. In some cases (for example a short suspension pending an announcement) the suspension will be lifted as soon as possible after the announcement is made. In other cases, the suspension will be continued until any relevant requirements have been met. The continuation of a suspension for a prolonged period without the Issuer taking adequate action to obtain restoration of trading may lead to the Exchange cancelling the listing.”*
3. The requirements for an Issuer to be reinstated to official quotation will depend on the circumstances which led to the suspension of the Company and other relevant conditions. If an Issuer can satisfy the requirements for reinstatement within the period of six months (e.g. payment of all outstanding fees, annual, preliminary or half-yearly report lodgement and any other outstanding requirements as advised by the Exchange) it may be reinstated immediately.
4. In an event whereby an Issuer has been suspended for more than six months (for example: a change in business activity, or if the Exchange deems it necessary, an Exchange enforced suspension whilst an investigation is being conducted), it may need to fulfil additional requirements imposed by the Exchange in order to be reinstated to official quotation.
5. The above requirements also extend to Issuers that are deemed not suitable for listing under Section 1, Listing Rule 2.22 irrespective of the term of the suspension. Section 1, Listing Rule 2.22 states: *“There may be cases where a listing is cancelled without a suspension intervening. Where the Exchange considers that an Issuer or its business is no longer suitable for a listing an announcement naming the Issuer and specifying the period within which the Issuer must have remedied those matters which have rendered it unsuitable for a listing will be disseminated by the Exchange. Where appropriate the Exchange will suspend trading in the securities of the Issuer. If the Issuer fails to remedy those matters within the period set out in the announcement the Exchange will cancel the listing.”*
6. The additional requirements and remedy to the matters that may render an Issuer unsuitable for listing may result in an Issuer undergoing the re-admission process through the listing and admission committee. This is to ensure that the Issuer remains a suitable Issuer for listing.



Long Term suspension

7. Where an Issuer has been suspended for 18 months or more, the exchange will notify them that they have six months to fulfil all additional requirements imposed by the Exchange in order to be reinstated to official quotation. Should the Issuer fail to meet this deadline, or otherwise satisfy the Exchange of the progress of the advised matters, the Issuer will be delisted.
8. For long term suspensions the Listing and Admissions Committee will review the suitability for re-quotation in the event that there has been a major re-capitalisation or change of scale or nature of business. In any event the Compliance Committee will review the compliance of suspended securities and their Issuers.
9. The Issuer whose securities are the subject of a long term suspension will be required to re-submit a suitability for listing application as per Practice Note 20. As part of this submission the Issuer will have regard to the following minimum requirements:

Item	Rule	Requirement
Application and suitability review	6.41	The Issuer must satisfy the Exchange that it is suitable for relisting.
Provide information to the Exchange	6.41(i)	To satisfy the Exchange the issuer should supply the Exchange with any information concerning the change of activities or demonstrate that the Issuer is clear of corporate administration requirements.
May be required to seek member approval for the change	6.41(ii)	If there is a change in principal activities then the Exchange should require member approval for the change. Generally, such approval will be carried out by the Issuer as part of the process for undertaking the new business.
May be required to apply as if an initial listing	6.41(iii)	The interaction of this part with (ii) above is that the Exchange should seek to have the required information that would normally form an initial application for listing. This <u>may</u> be required in the circumstances where the Issuer has significantly changed its corporate structure, principal activities, financial position and/or capital structure. Depending on the circumstances, the Exchange may require only some of the elements of an initial listing application to be met. Shareholder approval may also be needed to give effect to transactions that the Issuer is entering into.



Item	Rule	Requirement
Sufficient Operations	6.54	The Issuer must satisfy the Exchange that this requirement is met (see additional notes below).
Disclosure documents up to date	6.6, 6.7, 6.8, 6.9, 6.10, 6.11, 6.13, 6.17	Before relisting can commence the Issuer must satisfy the exchange that all necessary statutory disclosure documents that are required to be released to the Exchange have been released.
Equal to or more than 25% of securities held in public hands	6.20	The Issuer must satisfy the Exchange that this requirement is met.

Sufficient Operations

10. According to rule 6.54 the Issuer shall carry out, directly or indirectly, a sufficient level of operations or have tangible assets of sufficient value and/or intangible assets for which a sufficient potential value can be demonstrated to warrant listing.

The intention of this rule is that Issuers seeking to relist their securities should have a reasonable ability to operate within the listed environment.

Sufficient operations could include business activity that would be demonstrated in the statutory accounts of the entity and suitable corporate structures that demonstrate a level of operations either current or in the future. Demonstration can be by way of audited accounts or business plan presented by the Issuer. The Exchange may require both, depending on the circumstances.

If demonstration is by way of net tangible and intangible assets then the valuation of the tangible assets can be demonstrated by way of either executed contractual agreement for the purchase of the assets showing the actual consideration paid for the assets (historical cost), audited accounts or an independent experts report. In some circumstances shareholder approval may need to be sought for the transaction which will provide, amongst other matters, disclosure about the value of the transaction.

The corporate structure presented or proposed by the Issuer should be transparent so that the Exchange's ability to regulate the Issuer is not circumvented. The Exchange reserves the right to seek such clarifying information as would be required to demonstrate satisfaction of the Sufficient Operations rule.

As evidence to satisfy Rule 6.54, the directors can provide a declaration as per the standard Annual Report declaration stating that the business is solvent and has the support of directors where there is insufficient assets or operations or the corporate structure or information provided to the Exchange does not demonstrate ongoing funding support. An example declaration would be of the form *"In the directors' opinion, there are reasonable grounds to believe that the company will be able to pay its debts as and when they become due and payable"* and *"No person has applied for leave of Court to bring proceedings on behalf of the company or intervene in any*



proceedings to which the company is a party for the purpose of taking responsibility on behalf of the company for all or any part of those proceedings.”

The Exchange may publish any outstanding disclosures that the Issuer has to make and also, if appropriate, the declaration given to the Exchange as to the solvency of the Company above.

Exchange discretion to refuse listing

11. The Exchange reserves the right that even if the Issuer satisfies the technicalities of the rules for admission, that the listing may be refused. It is expected that a listing may be refused if information comes to light that is not within the spirit of the rules or the behaviour of the Issuer warrants the refusal, and the Exchange declares that the Issuer is unsuitable to be admitted to the Official List.

Fees for relisting

12. Where there has been a significant change in operations the applicable re-listing fees apply as per Practice Note 1: Fees.

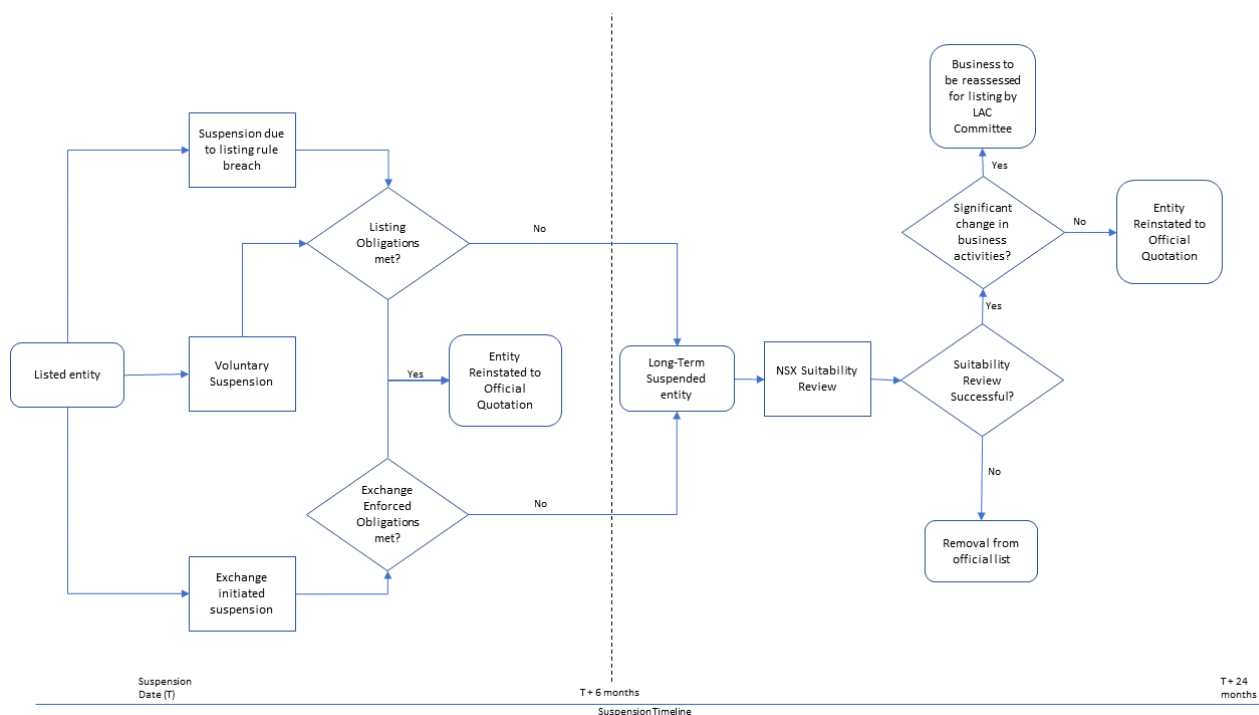
Section 6 – Ongoing obligations following removal from official quotation

1. An entity that is removed from the official list of The Exchange should note that in certain circumstances it may continue to be an “unlisted disclosing entity” which is subject to the continuous disclosure obligations set out in section 675 of the Corporations Act.
2. ASIC Regulatory Guide 198 Unlisted disclosing entities: Continuous disclosure obligations provides guidance on what is an unlisted disclosing entity and how an unlisted disclosing entity should comply with its continuous disclosure obligations under the Corporations Act.



Section 7 – Example process to relist

1. The below flowchart is designed to assist Issuers in identifying the various stages of being suspended and what the requirements are to transition and be re-instated to official quotation or be removed from official quotation.



Section 8 – Further Information

1. For further information, please contact:

Market Operations

National Stock Exchange of Australia Limited

Email: trading@nsx.com.au