

Nominated Advisers

Practice Note 22

Issued: 2024



Nominated Advisers

Practice Note #22

The purpose of this Practice Note

This Practice Note is designed to assist Nominated Advisers and Listed Issuers to meet their obligations and to comply with NSX Listing and Business Rules.

For new Nominated Advisers, information can be found with respect to the eligibility criteria and the application process.

The main points

- Overview
- Admission
- Responsibilities
- Continuing Eligibility
- Information Statement
- Annual Statement
- Annual Fee
- Conflicts of Interest
- Designation
- Resigning as a Nominated Adviser
- Re-joining as a Nominated Adviser
- Further information

Related materials

- NSX Listing Rules
 - NSX website
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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. Nominated Advisers and Issuers should contact NSX to ensure that they have the latest version of this practice note. As a practice note is only a guide to NSX practice, Issuers and Nominated Advisers 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 and/or their Nominated Adviser.
2. Nominated Advisers are a concept unique to the NSX in Australia. Nominated Advisers are professional firms and approved persons that have expertise in advising an Issuer concerning their obligations as a listed Issuer on NSX.
3. The principles used by NSX (the Exchange) include:
 - a) Preserving the reputation and integrity of the market;
 - b) Promoting high professional standards;
 - c) Building the framework for Nominated Advisers around established and reputable organisations; and
 - d) Seeking a balance between experience and qualifications.

Section 2 – Admission

Type of Entity

1. A Nominated Adviser applicant should be either:
 - a) a law firm;
 - b) a registered accounting firm;
 - c) a financial services licensee or an authorised representative of a financial services licensee;
 - d) a Participant of the Exchange;
 - e) a firm of investment or corporate advisers;
 - f) the responsible entity of a Managed Investment Scheme that is admitted to the Official List; or
 - g) with the consent of the Exchange, if the Exchange is of the opinion that an Issuer has sufficient resources available to it and has been listed for at least 24 months, two members of an Issuer's senior management ordinarily a resident in Australia: or
 - h) as approved by the Exchange.

Minimum Criteria

2. The following minimum criteria need to be met by a Nominated Adviser in order to satisfy the Exchange that it is competent to fulfil this role. It is emphasised however, that in assessing the suitability of an applicant to become a Nominated Adviser the Exchange's overriding consideration will be the preservation of the integrity or reputation of the market.



3. A Nominated Adviser applicant must nominate at least two Responsible Officers. At the Exchange's discretion, one Responsible Officer may be nominated in the first instance with a second Responsible Officer nominated at a later date but no later than 12 months after being granted Nominated Adviser status. The requirement of two Responsible Officers allows a Listed Entity have access to a Nominated Adviser with sufficient resources to meet its needs.
4. Satisfy to the Exchange that it is competent to discharge the responsibilities of a Nominated Adviser.
5. Undertake to the Exchange to accept the responsibilities of a Nominated Adviser and to discharge those responsibilities at all times to the satisfaction of the Exchange.
6. Applicants will be expected to be cognisant of the relevant sections of the Exchange rules and the Corporations Act.

Exchange right to refuse admission of Nominated Adviser

7. The Exchange reserves the right, at its absolute discretion, to refuse applications if the Exchange considers that the integrity and reputation of the market may be impaired notwithstanding that an applicant otherwise may meet the minimum requirements.

Sufficiency of Staff

8. Arrangements must be in place for a sufficient number of Responsible Officers to be available to ensure that the Nominated Adviser responsibilities can be properly discharged at all times.
9. Nominated Advisers must immediately inform the Exchange, in writing, of any responsible officers who leave their employ and must maintain a register of at least two Responsible Officers.
10. If at any time a Nominated Adviser has less than two Responsible Officers, the Exchange must be informed without delay. In such circumstances the Exchange may decide to suspend the Nominated Adviser from the register until such time as the position is rectified. Alternatively, the Exchange may remove the admission of the Nominated Adviser.

Admission Process

11. Applications to become a Nominated Adviser should be made to the Exchange using the relevant prescribed forms, these being:
 - a) Nominated Adviser Application Form; and
 - b) Nominated Adviser Responsible Officer Application Form for use when a Nominated Adviser applies and for each person thereafter. Each person who wishes to be appointed a Responsible Officer of a Nominated Adviser must complete Nominated Adviser Application Form before acting in that capacity and be approved by the Exchange.
12. All applicants will be required to nominate a person to act as the primary contact with the Exchange concerning the application.



Section 3 – Responsibilities

Responsibilities when a new Issuer is admitted to the Official List

1. The responsibilities of a Nominated Adviser, owed directly to the Exchange, are:
 - Provide to the Exchange the Nominated Adviser declaration; and
 - That in relation to any application for admission to the official list of the Exchange by an Issuer that:
 - a) the directors of the Issuer have received advice and guidance (from the Nominated Adviser or other appropriate professional adviser) as to the nature of their responsibilities and ongoing obligations to ensure compliance with and understanding of the Exchange's Rules (e.g. Corporations Act requirements, Listing Suitability, Corporate Governance, Continuous Disclosure and investor engagement); and
 - b) to the best of the knowledge and belief of the Nominated Adviser, the company is suitable to be a listed entity and all relevant requirements of the Exchange's Rules have been complied with.

Responsibilities while acting for a Listed Issuer

2. That the Nominated Adviser will be available at all times to advise and guide the Directors of the Issuer, regardless of language differences, as to their responsibilities and obligations to ensure compliance by the Issuer on an ongoing basis with the Exchange's Rules; and
3. The Nominated Adviser will confirm to the Exchange in writing when it ceases to be the Issuer's Nominated Adviser within such time limits as the Exchange may require¹.
4. To provide to the Exchange such information about the Issuer as the Listing Rules may require.

¹ Further information regarding resignation is included below in section 8.



Section 4 – Continuing Eligibility

1. If at any time the Exchange considers that the integrity or reputation of the market may be or may have been impaired as a result of the conduct or judgment of a Nominated Adviser, the Exchange may revoke the registration of the Nominated Adviser. The Exchange reviews the register of Nominated Advisers annually. This review will consider the conduct of each Nominated Adviser during the past year. The Nominated Adviser will be given written notice of the intention to remove it stating the reasons for removal.
2. When considering the conduct of Nominated Advisers, the paramount consideration will be the effect of such conduct on the integrity and reputation of the market, however the Exchange may take into account any of the following matters:
 - c) The conduct of Issuers for which the Nominated Adviser acts;
 - d) The conduct of the Nominated Adviser in its dealing with the Exchange;
 - e) Changes to the composition of the staff of the Nominated Adviser within the previous 12 months;
 - f) Responsible Officer's conduct;
 - g) Lodgement of the Information Statement;
 - h) Lodgement of the Annual Statement and payment of the Annual fee; and/or
 - i) Regulatory sanctions imposed on individual Responsible Officers.

Section 5 – Information Statement

1. Nominated Advisers are required to provide an Information Statement each year to maintain their continuing eligibility.

Section 6 – Annual Statement

1. Nominated Advisers are also required to provide an Annual Statement to the Exchange, which is released to the market as an announcement for those representing active Issuers.
2. Nominated Advisers that do not currently act for any Issuer are still required to complete an Annual Statement for those questions that are relevant, however the statement will not be released to the market as an announcement.



Section 7 – Fees

Application and Annual Fees

	Fee	GST	Total Fee
Application Fee - Joining	\$4,000	\$400	\$4,400
Annual Fee	\$3,000	\$300	\$3,300

Key Information to note:

1. Internal Nominated Advisers do not incur an application fee.
2. Whilst the above fees and charges are correct at the date hereof, NSX reserves the right to alter the above fees and charges from time to time.
3. Annual fees are payable in advance.
4. Annual fees are calculated on a pro-rata basis for all new applicants.
5. Annual fees are renewable in July of each year.
6. Fees are not refundable.
7. If annual fees are not paid on time the Nominated Adviser will be deregistered within 30 days of failing to pay. A new application may be required to re-join.

Section 8 – Conflicts of Interest

1. Nominated Advisers should avoid trading the NSX listed securities for which they have been appointed as a Nominated Adviser and should not be involved in facilitating trading instructions on behalf of the clients. This may include sending off-market transfer forms to the designated share registry of an Issuer.
2. Nominated Advisers should consider where they potentially have access to inside information relating to an Issuer that they are advising. Given the relationship with the Issuer, the Nominated Adviser, including its officers, may possess inside information and the consequences of actions related to the acquisition or disposal or facilitating such actions of the securities of the Issuer may be considered as Insider Trading. Nominated Advisers should refer to the trading policy of the Issuer.
3. If circumstances present that necessitate the trading activity or being an agent for the Issuer for trade facilitation of the clients, the Nominated Adviser must advise NSX prior to any activities occurring and it should be disclosed by the Issuer and the trading policies of the Issuer must be adhered to.



4. The consequences of not adhering to the above may include potential contraventions of the Corporations Act and disciplinary action imposed by NSX. In an event whereby an Issuer has appointed two members of the Issuer's senior management as nominated adviser the trading policy of the Issuer must be adhered to.
5. The above approach is consistent with market practice of managing conflicts of interest, as described in ASIC Regulatory Guide 181.
6. Further, a Nominated Adviser must give an undertaking not to act as Nominated Adviser for any organisation from which it is not independent.
7. The question of independence must be determined according to the circumstances of a particular case. However, the following rules apply generally:
 - a) A Nominated Adviser may not control, be controlled by or be under the same control as the Issuer. For this purpose, control will normally include the holding, directly or indirectly, of shares carrying 30 per cent or more of the voting rights of a company. If the Nominated Adviser is in any doubt it must consult the Exchange.
 - b) A normal business relationship between the Issuer and another company or part of the Nominated Adviser's group (e.g., banking) will not usually limit a Nominated Adviser from acting. There are, however, relationships that would give the Nominated Adviser's group a material interest in the success of the flotation, new issue or other relevant transaction; such relationships may not be consistent with the independence undertaking and a nominated adviser should consult with the Exchange in such cases.
8. A Nominated Adviser may be the corporate adviser, director of the Issuer, legal adviser or accountant of the Issuer.
9. A Nominated Adviser may be the responsible entity of a property trust.
10. A Nominated Adviser can be two members of senior management of the Issuer who are resident in Australia.
11. Any interest in the loan capital or the equity of the Issuer held by the Nominated Adviser or an associate of the Nominated Adviser should be disclosed to the Exchange and, as required, in the Disclosure Document or once listed disclosed to the market.

Section 9 – Designation

1. Nominated Advisers may state on their business documentation they are a 'Nominated Adviser registered with the National Stock Exchange of Australia Limited'.

Section 10 – Resigning as a Nominated Adviser

A Nominated Adviser wishing to resign must:

1. Inform, in writing, each NSX listed company it represents as a Nominated Adviser.
2. Allow sufficient time for those companies to engage and establish another Nominated Adviser.
3. Write to NSX informing NSX of the effective resignation date and that the companies for which it acts as a Nominated Adviser has an alternative Nominated Adviser in place.



Section 11 – Re-joining as a Nominated Adviser

1. A Nominated Adviser who has resigned and seeks to re-join as a Nominated Adviser in the same financial year, can re-join by:
 - a. Completing the Annual Statement and confirming and/or updating any personnel changes; and
 - b. Completing payment of a pro rata annual fee based on the re-joining date.
2. A Nominated Adviser who has resigned and seeks to re-join in a period outside the financial year in which it resigned, may re-join by:
 - a. Completing a new application, including Responsible Officers applications;
 - b. Completing payment of an application fee and a pro-rata annual fee based on the re-joining date; and
 - c. Receiving approval by the Listing and Admission Committee (LAC).

Section 12 – Further Information

1. For further information, please contact:

New admissions & Re-joining Enquiries:

NSX Admissions

Email: admissions@nsx.com.au

Phone: 02 9233 0100

Listed Entities:

NSX Compliance

Email: compliance@nsx.com.au

Phone: 02 9233 0100