



Guidance Note 6

Issued: March 2002

Key topics

1. Voting rights
2. Takeover of trusts
3. Distributions
4. Corporate governance

Listing Rules

1. Listing rule 4.10.3
2. Listing rule 6.4
3. Listing rule 6.8
4. Listing rule 6.9
5. Listing rule 15.11.1
6. Listing rule 15.14
7. Appendix 6A
8. Appendix 15A and 15B

Cross-reference

1. Guidance Note 2 – Stapled Securities
2. Guidance Note 9 – Disclosure of Corporate Governance Practices
3. ASIC Class Order 98/1808
4. ASIC Policy Statement 134 – Managed Investment Schemes: Constitutions

Guidance Note History

Re-issued: 1/7/2000
September
2001
March 2002

Trusts

Introduction

1. This Guidance Note is published to explain Australian Stock Exchange Limited (ASX) policy in relation to the listing of trusts.

Voting rights

2. The voting rights for security holders are set out in listing rules 6.4, 6.8 and 6.9. Listing rule 6.8 contains a requirement for one vote on a show of hands and, on a poll, one vote for each ordinary security held. However, these rules do not apply to securities of a registered managed investment scheme, as the Corporations Act deals with the voting rights of these securities.

Takeover issues

3. A policy reflected in the Listing Rules is that existing management of listed entities should not be able to interfere in the market for corporate control. Listing rule 15.14 requires that the responsible entity not be able to enforce sanctions for a breach of ownership restrictions contained in the trust deed.

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4. For tax reasons, trusts generally distribute all income earned to unit holders. Appendix 6A sets out a timetable that entities must follow when paying a dividend or distribution. The exact amount of income earned is generally not known at the time that clause 1 of appendix 6A requires the rate and amount of a distribution to be given to ASX. Accordingly, a waiver of this requirement is commonly granted on condition that an estimated distribution rate is given to ASX and the actual rate is given to ASX as soon as it becomes known.

Corporate governance

5. Listing rule 4.10.3 requires all listed entities, including trusts, to include a statement of corporate governance practices in each annual report. The application of this rule to trusts is discussed in Guidance Note 9 - Disclosure of Corporate Governance Practices: Listing Rule 4.10.

Stapled structures

6. Securities of a trust may be stapled to the securities of another trust or a company. ASX policy in relation to stapled structures which include trusts is discussed in Guidance Note 2 - Stapled Securities.

Appendix 15A

7. Listing rule 15.11.1 requires any listed entity amending its constitution to make the constitution (including the amendments) consistent with the Listing Rules. However, the rule provides an exception if the entity's constitution includes a standard provision (contained in Appendices 15A and 15B of the Listing Rules) giving precedence to the Listing Rules. The Australian Securities and Investments Commission (ASIC) has issued Class Order 98/1808 to allow the constitution of a registered managed investment scheme to include Appendix 15A - refer ASIC Policy Statement 134 – Managed Investments: Constitutions.

“Cooling off” period under section 1019B of the Corporations Act

8. Section 1019B of the Corporations Act provides that retail subscribers for units in a trust have the benefit of a “cooling off” period. The subscriber has the right to return the unit in the period of 14 days running from the earlier of “confirmation” (if the confirmation requirement applies) or the 5th day after issue. It is not possible for ASX to quote units while the cooling off period applies. In the case of a new admission to the official list, there is a risk that so many subscribers may exercise the right to return the units that the trust's ability to meet admission requirements will be prejudiced.

9. In the case of issues of additional units in an already quoted class this risk does not exist. However, it is inappropriate to allow quotation of units which potentially may be returned where there is a risk of confusion by security holders between units which may be returned and which may not be returned. The note to listing rule 2.10 therefore states that if the cooling off period applies, quotation may not be granted until 19 days after the issue of the units.
10. The package of draft regulations released by Treasury in February 2002 included an amendment to Regulation 7.9.64(1) that had the effect of excluding the following from the operation of the cooling off provisions.

(h) a managed investment product in relation to which section 1016D(2) of the Act applies.

The effect of this regulation is that the cooling off period does not apply to units offered under a Product Disclosure Statement which states or implies that quotation will be sought. If section 1016D(2) applies it provides subscribers with a right to the return of their money if quotation is not granted.

11. If the draft regulation as outlined is included in the final package of amendments, the cooling off period will not apply to units to be quoted, and there will be no obstacle to ASX quoting units in accordance with the normal timeframes that apply to the quotation of securities.