

CSX: continuing obligations for issuers with listed specialist debt securities - Chapter 8

Insights - 28/10/2019

Continuing obligations

This client briefing has been prepared for the assistance of directors of companies listing "specialist debt securities", including those listed under a programme, as defined in Chapter 1 of the listing rules (the **Listing Rules**) of the Cayman Islands Stock Exchange (the **Exchange**) under Chapter 8 of the Listing Rules.

The briefing sets out certain continuing obligations which an issuer is required to observe once its specialist debt securities have been admitted to listing. It is a summary only as of the date shown and should not be regarded as specific legal advice applicable to any particular circumstances.

It is a prerequisite of listing that an issuer executes an issuer's declaration, undertaking to comply with the Listing Rules and, in particular, with all relevant continuing obligations. Observance of the continuing obligations is essential to the maintenance of an orderly market in securities and to ensure that all users of the market have simultaneous access to the same information. Failure of an issuer to comply with any applicable continuing obligation may result in the Exchange taking the enforcement actions described in Chapter 3 of the Listing Rules.

The Listing Rules are available [here](#).

General obligation for disclosure for issuers

Generally and apart from compliance with the specific requirements of the Listing Rules, the issuer must keep the Exchange, the members of the issuer and other holders of its listed securities informed as soon as reasonably practicable, by way of public announcements or circulars, of any information relating to the group that:

- is necessary to enable them and the public to appraise the financial position of the group

- is necessary to avoid the establishment of a false market in its securities
- or might reasonably be expected materially to affect market activity in and the price of its securities

The Exchange shall be entitled to require the publication of further information by, and impose additional continuing obligations on, the issuer where it considers that circumstances so justify.

However, the Exchange will notify the issuer of its intention to do so and will allow representations by the issuer before imposing any additional obligations on it which are not imposed generally by the Exchange on issuers of the same type of listed security.

Each issuer of debt securities listed pursuant to this chapter must undertake, as a condition of being granted and maintaining a listing on the Exchange, to comply with the continuing obligations set out here.

New developments

The issuer must notify the Exchange, for release, of any new developments which are not public knowledge and which may reasonably be expected to affect materially the market activity in and the price of the listed securities, or the ability of the issuer to meet its commitments.

Equality of treatment

The issuer must ensure equal treatment of all holders of its listed securities of the same class in respect of all rights attaching to such securities.

Exercise of rights

The issuer must ensure that all the necessary information and facilities are made available to holders of the securities to enable them to exercise their rights. In particular, the issuer must notify the Exchange and publish notices or distribute circulars concerning the meetings of holders of its listed securities and the exercise of any conversion rights.

Financial statements

An issuer must publish audited annual financial statements in accordance with International Accounting Standards or such other standards as may be acceptable to the Exchange, within nine months of the end of the financial period to which they relate.

If the issuer prepares both own and consolidated financial statements, it may publish either form or both, provided that the form which is not published does not contain any significant additional information. If the annual audited financial statements do not give a true and fair view of the state of affairs at the end of the financial year or the profit and loss of the issuer or

the group, the Exchange may require additional information to be included therein.

If the audited annual financial statements have not already been made available to the holders of the securities, the availability of such annual financial statements must be notified to the Exchange and to the holders of the securities immediately following their publication.

At the same time as the audited annual financial statements and any interim financial statements are published, the issuer must send one copy to the Exchange.

The Exchange will waive the above requirements where:

- the listed securities of the issuer benefit from an unconditional and irrevocable guarantee of another company or the guarantee of a government or equivalent arrangements; or
- the issuer is a special purpose vehicle; and
- it has received written confirmation from the issuer that the non-publication of independently audited financial statements would not be likely to mislead investors with regard to the facts and circumstances, knowledge of which is essential for the assessment of the securities in question

Where the listed debt securities may be converted into securities of another entity, or are guaranteed by another entity, the issuer must, at the same time as the audited financial statements and any interim financial statements are published by such entity, send a copy to the Exchange, unless that entity is listed or adequate information is otherwise available.

Changes in rights

The issuer must notify the Exchange of any change in the rights of holders of any class of listed securities. Where the listed securities are convertible or their issue contemplate physical delivery, this requirement will also apply to any change in the rights of any class of securities into which the listed securities are convertible.

Interest

The issuer must notify the Exchange of any decision, in relation to any listed securities, not to make any interest payment contemplated by the terms of the issue of such securities.

Decision to purchase

Save where contemplated specifically by the terms of a particular issue of securities, the Exchange must be notified immediately for release of any decision to call, purchase, redeem or cancel any of the listed securities by the issuer or any member of the group.

Notification of purchases

The issuer must notify the Exchange immediately where any purchase, redemption or cancellation of securities of an aggregate of 10% of the initial nominal amount of the listed securities has been made. Once this threshold has been crossed, the issuer must notify the Exchange of any further purchases, redemptions or cancellations of each additional 5% or more of the initial nominal amount of such securities.

Such notification must state the nominal amount of the securities purchased or redeemed, whether such securities are to be cancelled and the nominal amount of the securities remaining outstanding.

Paying agent

Unless derogated at the time of listing, the issuer must maintain a paying agent in the Cayman Islands or other financial centre acceptable to the Exchange until the securities are finally redeemed. The Exchange must be notified of any change of such paying agent. The issuer may itself perform this function if it can demonstrate to the Exchange that it is capable of doing so.

Clearance and settlement

The issuer must make arrangements acceptable to the Exchange to facilitate the efficient clearance and settlement of all trades and, where applicable, the registration of all transfers of its listed securities.

Asset-backed securities

If further securities are to be issued backed by the same assets, unless those further securities rank *pari passu* with or are subordinated to any class of existing listed securities, prior approval of holders of that class must be sought.

Any changes to the trustee or other appropriate independent representative appointed, the custodian appointed or the entity appointed to manage/service the portfolio of assets must be notified to the Exchange.

General nature of the business

Any decision to change the general character or nature of the business of the issuer, guarantor or group must be notified to the Exchange.

Constitution

Any proposed change in the constitution of the issuer or the group or its registered or principal office must be notified to the Exchange.

Directors

Any changes in the issuer's directors must be notified to the Exchange.

Auditor

Any change in the issuer's auditor must be notified to the Exchange.

Equivalent information

Where securities listed on the Exchange are also listed on another stock exchange, the issuer must ensure that copies of all documents required to be filed and information required to be notified to the Exchange are promptly made available to such other stock exchange.

Public announcement

The Exchange will upon notification of any of the above matters make a public announcement with respect to such matters. This is usually done via the issuer's Listing Agent providing the Exchange with the relevant information.

Annual fee

Issuers are required to pay an annual fee to the Exchange in accordance with the schedule of fees published on the Exchange's website, as updated from time to time.

Distribution of other documents

The issuer must send to the Exchange a copy of all notices of meetings, forms of proxy, any reports, announcements or other similar documents at the same time as they are issued.

Exception

Where, in the opinion of any issuer, disclosure of any matter required by the listing rules would be unduly detrimental to the issuer, the issuer may apply for a waiver from the relevant requirement. The information, together with a statement of the reasons why the issuer believes the information should not be disclosed at that time, must be provided to the Exchange. The Exchange will deal with the information on a strictly confidential basis. However, the Exchange may at any time order that an announcement be delivered to it for dissemination by the Exchange.

Enforcement actions

If the Exchange considers that an issuer has contravened the Listing Rules, it may do one or more of the following:

- suspend trading or cancel the listing of all or any of the issuer's securities where the Exchange considers it necessary for the protection of investors or the maintenance of an

orderly market

- censure the issuer and publish the fact that the issuer has been censured for failing to comply with the Listing Rules
- where the Exchange considers that a contravention of these listing rules by an issuer is due to a failure by all or any of its directors to discharge their responsibilities, it may censure the relevant directors and publish the fact that the directors have been censured and state publicly that in its opinion the retention of office by or appointment of certain directors is prejudicial to the interests of investors

There may be cases where a listing is cancelled without first being suspended.

Where the Exchange considers that an issuer or its business is no longer suitable for a listing, after notification to the issuer, the Exchange will issue 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. Where appropriate the Exchange may 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.

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