



Listing Rules Consultation Paper

October 2022



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Introduction

PNGX

PNGX Markets is the national stock exchange of Papua New Guinea.

PNGX is responsible for providing an orderly and fair market in relation to securities which are traded through its facilities and for acting in the public interest having regard to the need for protection of investors. PNGX is regulated and approved as a stock exchange by the Securities Commission of Papua New Guinea.

PNGX is the National Numbering Agency for Papua New Guinea.

PNGX's Listing Rules govern the quotation of securities, their admission to the official list and hence the listing of the issuer. They also govern disclosure and some aspects of an issuer's conduct.

PNGX and investors in the PNGX markets have an interest in high standards of corporate governance practices by the Boards of companies in which they invest.



The Listing Rules

PNGX's Listing Rules govern the quotation of securities, their admission to the official list and hence the listing of the issuer, the suspension of securities from quotation and the removal of securities from quotation. They also govern disclosure and some aspects of a listed entity's conduct.

An entity applying to have its securities quoted on PNGX signs an agreement to comply with the Listing Rules, as in force from time to time. This applies even if the quotation of its securities is deferred, suspended or subject to a trading halt.

The introduction of Listing Rules or any amendment to them requires the approval of SECOM in accordance with section 11 of the Capital Market Act.

The Listing Rules are enforceable against issuers under contract and under the Capital Market Act.

If an issuer does not comply with the Listing Rules, PNGX may in its absolute discretion, suspend its securities from quotation or it may remove them from the official list.

Section 443 of the Capital Market Act provides that where an issuer, being a person to whom the Listing Rules apply, fails to comply with or observe the Listing Rules, that person has committed a breach.

Under section 458 of the Capital Market Act, a person who with intent to deceive, makes or furnishes, or knowingly authorises or permits the making or furnishing of, any false or misleading statement to PNGX relating to the affairs of an issuer is guilty of an offence.

Under section 420 of the Companies Act every director or employee of an entity who makes or furnishes, or authorises or permits the making or furnishing of, a statement or report to PNGX that relates to the affairs of the entity and that is false or misleading in a material particular, knowing it to be false or misleading, commits an offence.

The *Capital Market Act 2015* context

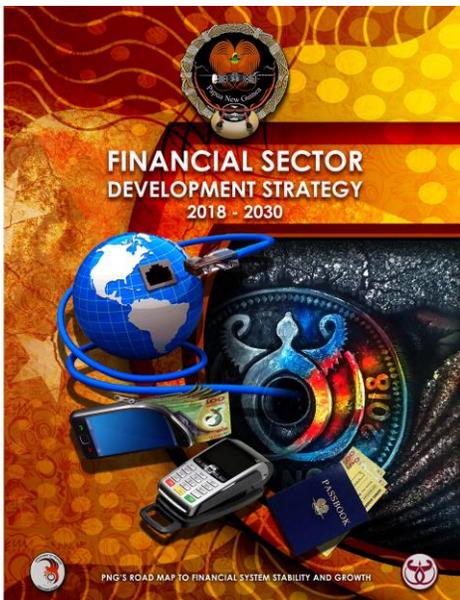
An issuer whose securities are granted quotation on the PNGX market has its securities admitted to the official list of PNGX and the issuer is listed as defined in the *Capital Market Act*.

The Listing Rules are “rules” for the purposes of section 2 of the *Capital Market Act*. The Listing Rules are “listing rules” as defined in section 2 of the *Capital Market Act*. The Listing Rules and any amendment to them are approved by SECOM in accordance with section 11 of the *Capital Market Act*.

The PNGX market is a stock market as defined in the *Capital Market Act*. PNGX, as operator of the market, acts in its capacity as a stock exchange as defined in the *Capital Market Act*.

Background to this consultation

The PNG Government launched its Financial Sector Development Strategy (FSDS) in 2019.



The FSDS recognises that a key building block to redeveloping PNG’s capital markets is the development of a more effective secondary market in equity securities and government securities.

The FSDS seeks to make Port Moresby at least as attractive a centre for PNG firms to raise debt and equity capital as is Sydney. It acknowledges the competitive advantages of PNG in that firms can achieve greater visibility and investor interest locally than in Australia, the “home bias” of PNG investors and the absence of currency risk investing in PNG by PNG investors.

A key step towards the development of a more effective secondary market in equity securities is the modernisation of the PNGX Listing Rules.

The existing PNGX Listing Rules were introduced in April 1999 and were based upon the then current Listing Rules of the Australian Stock Exchange. They were last amended in November 2012. They are based upon the *Securities Act 1997*, which was replaced in November 2018 by the *Capital Market Act 2015*.

PNGX is proposing to introduce new Listing Rules (the “Proposed Rules”) to replace the existing Listing Rules (the “Existing Rules”). The objectives of the rewrite are to:

- a) Update the Listing Rules to reflect the *Capital Market Act 2015*; and
- b) Introduce Listing Rules which are “fit for purpose” for the nature and scale of the PNG capital market; whilst
- c) Aligning the Proposed Rules with contemporary ASX Listing Rules, but not replicating the ASX Listing Rules, in recognition of the significant portion of the PNGX market which is dual listed on ASX, thereby minimizing compliance costs which would arise from significant variance between the rules.

As a starting point for the development of the Proposed Rules, PNGX has been granted a licence by ASX for the ASX Listing Rules as at March 2019. PNGX is aware that ASX has subsequently amended its Listing Rules. Those amendments have not been reflected in the Proposed Rules.

Positioning of the markets operated by PNGX

To date, PNGX has operated a single equities market. Having regard to the nature of the PNG capital market, PNGX will be developing specialist markets for differing sectors of the capital market in order to better facilitate access to capital for issuers with different levels of maturity and for different financial products and services.

The proposed market offerings which have been or are being developed are as follows:

Current	Proposed	Status
PNGX equities market	BikMaket Main Market	Renamed current equities market
	DinauMaket Debt Market	New corporate debt market
	PasisMaket Passage Market	Proposed equities “passage” market for medium sized issuers
	GroMaket Growth Market	Proposed platform for small and medium sized issuers to access funding and social fund raising

This consultation paper relates solely to the BikMaket or Main Market.

Consultation Process

PNGX is releasing the Proposed Rules for consultation and feedback from interested parties.

The Proposed Rules comprise 3 volumes:

- a) Listing Rules;
- b) Listing Rules Appendices; and
- c) Listing Rules Procedures.

Ordinarily, amendments to the Listing Rules would be shown in mark-up. As this is a complete rewrite of the Existing Rules, that has not been possible.

PNGX will be running consultation workshops in Port Moresby and Lae for listed companies and their professional advisers. The sessions will be:

15 November	Lamana Hotel, Port Moresby	9.00 - 12.00
16 November	Lamana Hotel, Port Moresby	9.00 - 12.00
18 November	Lae International Hotel, Lae	9.00 - 12.00

Owing to space constraints, bookings must be made. Bookings can be made by emailing consultation@pngx.com.pg. Indicate date and location of session you wish to attend and the names of attendees. There is no charge for attendance.

The Consultation period will close at 5.00pm on Friday 16 December 2022.

Please provide any comments by 5.00pm on Friday 16 December 2022 in writing by email to:
Elizabeth Wamsa
General Manager
consultation@pngx.com.pg.

The structure of the Listing Rules

The Existing Rules were introduced in April 1999 and were based upon the then current Listing Rules of the Australian Stock Exchange. The Existing Rules have not been substantially amended since 1999.

Since that time capital markets have changed significantly. Therefore, the Existing Rules are not necessarily fit for purpose in the current PNG context.

As many currently listed companies are also dual listed on ASX, it is preferable that the Proposed Rules align closely with, but do not replicate, the ASX Listing Rules to minimize compliance costs. However, the current ASX listing Rules are based on rules which were themselves introduced in 1997 and have been amended numerous times since then.

The Proposed Rules are based upon the 2019 ASX Listing Rules. PNGX has a licence agreement with ASX for the use of the 2019 Listing Rules. However, to make the Proposed Rules more relevant to the market, they have been restructured into new, more relevant Chapters.

Regard has also been had to the Listing Rules of New Zealand, Fiji, Toronto, Israel, Seychelles, Sri Lanka and Botswana, along with various academic and industry publications, including those of the World Federation of Exchanges (WFE) and the International Organization Of Securities Commissions (IOSCO).

An additional recent significant change in the PNG context has been the introduction of the *Capital Market Act 2015*



to replace the *Securities Act 1997*. The *Capital Market Act* contains matters which have a direct impact upon the Proposed Rules. This includes capital raising provisions, disclosure of director's interests and takeovers. Accordingly, the Proposed Rules have been drafted to align with the *Capital Market Act* to the extent it is currently practicable to do so. At present, the *Capital Market Act* does not contain a Takeovers Code hence, the Listing Rules are largely silent on takeovers until such time as the Takeovers Code is introduced and takes effect. Similarly, *Regulations* supporting the *Capital Market Act* are not yet introduced.

The introduction of the *Capital Market Act 2015* was accompanied by the introduction of the *Central Depositories Act 2015*. At present, there is no central securities depository (CSD) in PNG. However, as any future introduction of a CSD will have an impact upon listed companies and the capital markets more broadly, the Proposed Rules have been drafted to acknowledge the potential for a CSD at a future date.

The Proposed Rules refer to reporting corporate governance matters as set out in the PNGX Corporate Governance Standards. These standards are presently under development with the assistance of the International Finance Corporation and will be made available for comment. If their development is sufficiently progressed, they will be introduced in proximity to the commencement of the Proposed Rules. If not, the corporate governance disclosure requirements in the Existing Rules will be maintained until the new standards can be introduced.

A key drafting principle in the Proposed Rules is, to the maximum extent possible, not to replicate obligations set out in the *Companies Act 1997* or the *Capital Market Act*. It is not the role of PNGX to supervise or enforce the

Companies Act or the *Capital Market Act* nor does PNGX have any jurisdiction to do so. Whilst replication of any provision of the *Companies Act* or the *Capital Market Act* in the Proposed Rules would give PNGX jurisdiction to enforce that Listing Rule, there would remain scope for PNGX to take a differing interpretation and differing approach to enforcement to those which might be taken by the primary regulatory authorities and create regulatory arbitrage and uncertainty. Hence it is avoided to the maximum extent practicable. However, in order to minimize compliance costs and to promote consistency, terminology used in the *Companies Act* or the *Capital Market Act* is adopted, where appropriate, in the Proposed Rules. Similarly, concepts which are contained in the *Companies Act* or the *Capital Market Act* which can be adapted and adopted in the Proposed Rules have been (for example, the concept of “major transactions” which replaces the concept of “significant transactions” in the Existing Rules).

From a final structural perspective, the Proposed Rules comprise 3 volumes:

- The Listing Rules;
- The Listing Rule Appendices; and
- The Listing Rule Procedures.

Section 11 of the *Capital Market Act* requires that the Securities Commission (SECOM) approves the Listing Rules and any amendment to the Listing Rules. Materials which are not part of the Listing Rules are not subject to SECOM approval pursuant to section 11 of the *Capital Market Act*. Following the structures adopted by a number of overseas markets, including the ASX, the Proposed Rules make it clear that the Appendices are part of the Listing Rules, but the Procedures are not part of the Listing Rules. The content of the Procedures is primarily administrative matters which are not material to the operation of the market and which provide PNGX with flexibility to adjust its requirements quickly as circumstances arise. As such, any amendment to the Appendices requires SECOM approval, but any amendment to the Procedures does not require SECOM approval. However, if an amendment to a Procedure is considered material, the Proposed Rules set out the consultation requirements for change.



To assist with interpretation and administration, many rules are accompanied by notes or examples and each rule is accompanied by the history of its amendment. For ease of reading, these notes, examples and history have been placed alongside each rule. Relevant references to the *Companies Act* and *Capital Market Act* have been included for ease of interpretation. Notes, examples and history do not form part of the Proposed Rules for the purposes of section 11 of the *Capital Market Act*.

The principles on which the Listing Rules are based

Notable changes

	New Principles	Existing Principles	Observations
Principle 1	An entity should satisfy appropriate minimum standards of quality, size, operations and management experience and expertise before it is admitted to the *official list and disclose sufficient information about itself to allow an informed market in its *securities once they are *quoted.	Minimum standards of quality, size, operations and disclosure must be satisfied.	Existing Principle 1 is extended to require appropriate management experience and expertise
Principle 2	Sufficient investor interest in an entity's *securities should be demonstrated before it is admitted to the *official list and its *securities are *quoted.	Sufficient investor interest must be demonstrated to warrant an entity's participation in the market by having its securities quoted.	
Principle 3	*Securities should be issued in circumstances, and have rights and obligations attaching to them, that are fair to new and existing *security holders.	Securities must be issued in circumstances which are fair and reasonable to new and existing security holders and the company. Securities must have rights and obligations attaching to them that are fair to new and existing security holders.	Existing Principles 3 and 4 are merged
Principle 4	Timely disclosure should be made of information which may have a *material effect on the price or value of an entity's *securities.	Timely disclosure must be made of information which may affect security values or influence investment decisions, and information in which security holders, investors and POMSoX have a legitimate interest.	Existing Principle is amended to align with the continuous disclosure requirements regarding information which may have a material effect on the price or value of an entity's securities

Principle 5	Financial statements should be produced in accordance with acceptable accounting and auditing standards.	Information must be produced according to the highest standards and, where appropriate, enable ready comparison with similar information.	
Principle 6	An entity should disclose information about its corporate governance practices and explain any departure from generally accepted standards of good corporate governance.	The highest standards of integrity, accountability and responsibility of entities and their officers must be maintained.	
Principle 7	The practices adopted in relation to meetings of *security holders should allow *security holders the opportunity to express their views openly to the board and management.	Security holders must be consulted on matters of significance.	
Principle 8	Certain significant transactions should require *security holder approval.	Security holders must be consulted on matters of significance.	
Principle 9	Directors should act in the interests of all shareholders as a whole.	Practices must be adopted and pursued which protect the interests of security holders, including ownership interests and the right to vote.	Principle 9 is also consistent with the obligations of directors under section 377 of the Capital Market Act
		Market transactions must be commercially certain.	Market transactions on PNGX are outside the scope of the Listing Rules and within the scope of the Business Rules.

Chapter 1 – Requirements for quotation of an initial class of securities

Primary categories of issuer

The Existing Rules contain distinctions between

- general issuers;
- exempt foreign issuers; and
- debt issuers.

The Proposed Rules contain distinctions between

- Domestic issuers;
- Foreign issuers;
- Exempt issuers; and
- Debt issuers.

The Domestic Issuer category is for issuers incorporated or established in PNG.

The Foreign Issuer category is for issuers incorporated or established outside PNG and which do not satisfy the Exempt issuers requirements. They must comply with the Listing Rules of their primary market, usually their home jurisdiction, and with most PNGX Listing Rules.

Exempt Issuers must comply with the Listing Rules of their primary market, usually their home jurisdiction, and with a minimal number of the PNGX Listing Rules.

The Exempt Issuers category is for issuers listed on the Australian (ASX), New Zealand (NZX), Fiji (SPX) and Singapore (SGX) markets which satisfy, amongst other requirements, the market capitalisation criteria of PGK 50 million. PGK 50 million is a proxy for the quality of company admitted as an Exempt Issuer. It has been reduced from PGK 100 million to accommodate a larger number of potential dual listings from Australia and Fiji of companies with activities within PNG. This will open up the PNG market to potentially a larger number of Australian issuers with activities in PNG and provide a basis for dual-listing of issuers between PNG and Fiji as envisaged in the MOU between PNGX and SPX in December 2019.

It should be noted that PNGX has formed the view that the current listing market is not an appropriate structure for provision of a market for SMEs. An alternate market structure is required for their special characteristics. Hence, SMEs are out of scope for the Proposed Listing Rules. A platform for SMEs will be provided by the GroMaket and for medium sized enterprises in the PasisMaket.

Sub-categories of issuer

The Existing Rules contain distinctions between

- Investment entities;
- Mining exploration companies;
- Mining production companies;
- Oil & gas exploration companies; and
- Oil & gas production companies.

The Proposed Rules contain distinctions between

- Investment companies;

- Special purpose acquisition companies;
- Mining exploration companies;
- Mining production companies;
- Oil & gas exploration companies; and
- Oil & gas production companies.

The requirements for investment companies, mining exploration companies, mining production companies, oil & gas exploration companies and oil & gas production companies remain largely unchanged.

The special purpose acquisition company concept is similar to structures adopted in Canada and Botswana. They have been a growth sector of financial markets in recent years.

Special purpose acquisition companies are companies the assets of which primarily comprise cash or near-cash assets. They are a special purpose vehicle incorporated for the purpose of facilitating the primary capital raising process to enable the acquisition of specific assets in pursuit of a listing on PNGX or which may be the shell of an existing listed company awaiting the subsequent identification of specific assets for acquisition. A special purpose acquisition company may be used to acquire or fund SMEs.

The scope of activities of special purpose acquisition companies will be restricted until such time as an acquisition is made in order to protect the assets of investors. Special purpose acquisition companies will also be required to make weekly NTA disclosures and detailed quarterly and annual disclosures. There is a potential cross-over between the special purpose acquisition company concept, investment company concept and backdoor listing concept.

The requirements for special purpose acquisition companies are primarily set out in Chapters 1 and 7.

Special purpose acquisition companies are not an ideal form of entity for a public market. In the form of a primarily cash-based entity, they add little economic value to the market or the economy. However, they can act as a catalyst for raising funds to eventually be invested in productive entities, in particular, SMEs.

An existing listed company may find itself in a position of being categorized as a special purpose acquisition company by virtue of having sold its primary undertaking and its assets comprising primarily cash while awaiting the identification of an acquisition for a new undertaking (commonly called a “cashbox”). Hence, PNGX considers it appropriate to address the issues of cashboxes in the Listing Rules in the same manner as special purpose acquisition companies.

To mitigate the risks presented by special purpose acquisition companies, it is proposed to require adherence to specific rules governing their activities and disclosures. These measures are designed to protect the capital of investors, reduce the risk for funds to be “siphoned” to related parties and limit reputational risk to the market.

These include:

- a) minimum net tangible (NTA) assets of PGK 15 million;
- b) weekly reporting of NTA;
- c) quarterly cash flow reporting;
- d) quarterly activities reporting;
- e) additional annual reporting;
- f) controls on the use of funds;
- g) a requirement that cash assets be held by an independent trustee and only utilised in accordance with the investment criteria and the Listing Rules and that the trustee provide a statement in the annual report;
- h) controls on transactions with related parties;

- i) time constraints on completion of a major transaction, failing which capital is returned to security holders and the entity may be liquidated.

Similar markets structures have been adopted in other markets.

Fit and proper requirement

It is proposed to introduce a requirement that a new issuer satisfy PNGX that the directors are fit and proper and have appropriate experience and expertise.

It is also proposed to require disclosure to the market of a statutory declaration in relation to fit and proper criteria as set out in Appendix 1E. The requirement for disclosure to the market of a statutory declaration in relation to fit and proper criteria as set out in Appendix 1E will also apply on an ongoing basis to any directors appointed after the issuer is admitted to the official list. This allows the market to make an informed decision in relation to the quality of directors.

The requirement for appropriate experience and expertise would be expected to include specialist knowledge relevant to the business of the listed issuer and appropriate level of understanding of the expectations of good corporate governance.

Corporate Governance

It is proposed that an applicant make disclosure of:

- a) the extent to which it follows the recommendations in the PNGX Corporate Governance Standards; and
- b) its Trading Policy

Detail in relation to Corporate Governance Standards and the Trading Policy is set out in Chapter 17.

A company with quoted securities as at the Commencement Date of the new rules will be given 6 months to release a trading policy.

Quantitative criteria requirements – working capital, profit & NTA tests

The Existing Rules require a new listing to satisfy either the profit test or the net assets test.

It is proposed to amend the criteria of the profit test and the net assets test and to introduce a separate working capital test which applies to all applicants, not just those satisfying the net tangible assets test at present.

The working capital test is proposed on the premise that investors should have confidence that a listed company has sufficient working capital for at least the first 12 months without having to return to shareholders or the market for additional capital.

Working Capital Test

The working capital test, which is a part of the current net tangible assets test, will be amended to require working capital of at least PGK 300,000 and sufficient working capital for projected normal operations for at least the first 12 months after initial quotation of its securities. Working Capital is defined to mean current assets less current liabilities after excluding:

- a) the costs of any capital raising;

- b) related entity loans;
- c) related entity receivables;
- d) intangible assets;
- e) budgeted director's fees for the following 12 months;
- f) in the case of a mining exploration company or oil & gas exploration company, the following 12 months' budgeted:
 - i. administration costs;
 - ii. the costs of acquiring plant and equipment;
 - iii. the costs of acquiring mining tenements; and
 - iv. the costs of acquiring oil & gas tenements.

Profit Test

The criteria for the profit test is proposed to be amended as follows:

	New Profit Test	Existing Profit Test	Observations
<i>Condition 1</i>	The issuer must be a going concern. This Rule is satisfied if the issuer is the successor of a going concern.	The entity must be a going concern. This rule is satisfied if the entity is the successor of a going concern.	
<i>Condition 2</i>	The issuer's main business activity must be the same as it was during the last 3 full financial years.	The entity's main business activity at the date it is admitted must be the same as it was during the last 3 full financial years.	
<i>Condition 3</i>	The issuer's aggregated *profit from continuing operations for the last 3 full financial years must have been at least PGK1 million.	The entity's aggregated profit from continuing operations for the last 3 full financial years must have been at least K600,000.	Profit proposed to be increased from PGK 600,000 to PGK 1 million in recognition of inflation since rules were last amended
<i>Condition 4</i>	The issuer's consolidated *profit from continuing operations for the 12 months to a date no more than 2 months before the date the issuer applied for *quotation must exceed PGK500,000.	The entity must give POMSoX a statement from all directors confirming..... Consolidated profit, from continuing operations for the 12 months to a date no more than 2 months before the date the entity applied for admission, exceeded K250,000.	Profit proposed to be increased from PGK 250,000 to PGK 500,000 in recognition of inflation since rules were last amended
<i>Condition 5</i>	The issuer must give PNGX a statement from all directors confirming that they have made enquiries and nothing has come to their attention to suggest that the issuer is not continuing to earn *profit from continuing operations up to the date of application.	The entity must give POMSoX a statement from all directors confirming..... They have made enquiries and nothing has come to their attention to suggest that the economic entity is not continuing to earn profit from continuing operations up to the date of application	

<p>Condition 6</p>	<p>The issuer must give PNGX each of the following.</p> <ul style="list-style-type: none"> (a) Audited +accounts for the last 3 full financial years. If the issuer applies for +quotation less than 90 days after the end of its last financial year, unless the issuer has audited +accounts for its latest full financial year, the +accounts may be for the 3 years to the end of the previous financial year but must also include audited or reviewed +accounts for its most recent half year as well; (b) If the issuer applies for +quotation more than 6 months and 75 days after the end of its last financial year, audited or reviewed +accounts for its most recent half year (or longer period if available); (c) A reviewed pro forma statement of financial position. The review must be conducted by a registered company auditor (or, if the issuer is a +foreign issuer, an overseas equivalent of a registered company auditor) or an independent accountant; and (d) The issuer must provide the audit report or review to PNGX. 	<p>The entity must give POMSoX each of the following.</p> <ul style="list-style-type: none"> a) Audited financial statements for the last 3 full financial years. If the entity applies for admission less than 90 days after the end of its last financial year, unless the entity has audited financial statements for its latest full financial year, the financial statements may be for the 3 years to the end of the previous financial year. Audit reports must be given to POMSoX with the financial statements. The audit reports must not have been qualified in a way that goes to whether the entity can continue as a going concern or has satisfied the profit levels required. b) If the last full financial year for which financial statements must be given to POMSoX ended more than 8 months before the entity applies for admission, audited or reviewed financial statements for the last half year (or longer period if available) from the end of the last full financial year, together with the audit report or review. c) A reviewed pro forma balance sheet together with the review, unless POMSoX agrees the pro forma balance sheet is not needed. The review must be conducted by a registered company auditor or an independent accountant.
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Net assets test

The criteria for the net assets test is proposed to be amended as follows:

	New Principles	Existing Principles	Observations
	An issuer required to satisfy the assets test must satisfy the following conditions to PNGX's satisfaction:	To meet the net tangible assets test, an entity (except a +mining exploration entity or investment entity) must satisfy each of the following.	
<i>Condition 1</i>	The issuer must be a going concern. This Rule is satisfied if the issuer is the successor of a going concern.	The entity's business must be developed to the point where it is reasonably likely that the entity will generate revenue from its ordinary activities within 3 years after admission. If POMSoX requires it, the entity must give POMSoX a written statement to that effect from an independent expert. The statement must make clear the basis on which it is made.	The nature of the requirement is amended to a going concern test instead of a forwards projections expectation.
<i>Condition 2</i>	In the case of an issuer that is not an +investment company or a +special purpose acquisition company, at the time of +quotation the issuer must have net tangible assets of at least PGK4 million (after raising any funds and after deducting the costs of raising those funds).	The entity must have net tangible assets at the time of admission of at least K1.5million, after deducting the costs of fund raising.	NTA proposed to be increased from PGK 1.5 million to PGK 4 million in recognition of inflation since rules were last amended Applies to mining exploration entities also
<i>Condition 3</i>	In the case of an issuer that is not an +investment company or a +special purpose acquisition company, at the time of +quotation less than half of the issuer's total tangible assets (after raising any funds and after deducting the costs of raising those funds) must be +cash assets.	Either: a) less than half of the entity's total tangible assets (after raising any funds) must be cash or in a form readily convertible to cash; or b) half or more of the entity's total tangible assets (after raising any funds) are cash or in a form readily convertible to cash, and there are binding contracts to invest or spend enough	The intent of part (b) of the existing rule is redrafted in a new Condition 5.

money for the proportion to be reduced to less than half. The binding contracts must not be subject to conditions precedent except ones relating to the satisfaction of a minimum subscription condition of the fund raising, and admission to the official list.

<i>Condition</i> 4	In the case of an issuer that is an *investment company or a *special purpose acquisition company, at the time of *quotation the issuer must have net tangible assets of at least PGK15 million (after raising any funds and after deducting the costs of raising those funds).	The entity must have net tangible assets at the time of admission of at least K1.5 million, after deducting the costs of fund raising.	Net tangible assets proposed to be increased from PGK 1.5 million to PGK 15 million rather than being an optional criteria as in the current rules. The change is also in recognition of inflation since rules were last amended and in recognition of the critical mass required for a viable and meaningful investment entity or special purpose acquisition company.
<i>Condition</i> 5	In the case of an issuer that is not an *investment company or a *special purpose acquisition company, at the time of *quotation the issuer must have firm commitments consistent with its business objectives to spend at least half of its *cash assets (after raising any funds and after deducting the costs of raising those funds). The business objectives must be clearly stated and include the proposed use of the funds raised. If its *prospectus does not contain a statement of the business objectives, the issuer must give a statement of its business objectives to PNGX.		New
<i>Condition</i> 6	In the case of an issuer that is not an *investment company or a *special purpose acquisition	The entity must give POMS0X each of the following.	The requirement for historic accounts is reduced from 3 years to 2 years for issuers

company, unless PNGX agrees otherwise, the issuer must give PNGX each of the following.

(a) Audited *accounts for the last 2 full financial years. If the issuer applies for *quotation less than 90 days after the end of its last financial year, unless the issuer has audited *accounts for its latest full financial year, the *accounts may be for the 2 years to the end of the previous financial year but must also include audited or reviewed *accounts for its most recent half year as well.

(b) If the issuer applies for *quotation more than 6 months and 75 days after the end of its last financial year, audited or reviewed *accounts for its most recent half year (or longer period if available).

(c) If the issuer has in the 12 months prior to applying for *quotation *acquired, or is proposing in connection with its application for *quotation to *acquire, another issuer or business that is significant in the context of the issuer:

a. Audited *accounts for the last 2 full financial years for that other issuer or business. If the issuer applies for *quotation less than 90 days after the end of the last financial year for that

a) Any financial statements, together with any audit report or review:

- for the last 3 full financial years (or shorter period if POMSoX agrees); and
- if the last full financial year ended more than 8 months before the entity applied for admission, for the last half year (or longer period if available) from the end of the last full financial year.

If the financial statements have not been audited or reviewed, the entity must tell POMSoX.

b) [Not used]

c) A reviewed pro forma balance sheet, together with the review, unless POMSoX agrees the pro forma balance sheet is not needed. The review must be conducted by a registered company auditor or an independent accountant.

(other than investment companies and special purpose acquisition companies)relying on the assets test. It remains 3 years for issuers relying on the profits test as that test relies upon the issuer's main business activity must be the same as it was during the last 3 full financial years.

other issuer or business, unless the other issuer or business has audited +accounts for its latest full financial year, the +accounts may be for the 2 years to the end of the previous financial year but must also include audited or reviewed +accounts for its most recent half year as well;

- b. If the issuer applies for +quotation more than 6 months and 75 days after the end of the last financial year for that other issuer or business, audited or reviewed +accounts for that other issuer or business for its most recent half year (or longer period if available);
- (d) A reviewed pro forma statement of financial position. The review must be conducted by a registered company auditor (or, if the issuer is a +foreign issuer, an overseas equivalent of a registered company auditor) or an independent accountant; and
- (e) The issuer must provide the audit report or review to PNGX.

Condition 7 In the case of an issuer that is an +investment company or a

The requirement for historic accounts is reduced from 3

*special purpose acquisition company, unless PNGX agrees otherwise, the issuer must give PNGX each of the following.

- (a) Audited *accounts for the last 1 full financial year. If the issuer applies for *quotation less than 90 days after the end of its last financial year, unless the issuer has audited *accounts for its latest full financial year, the *accounts may be for the 1 year to the end of the previous financial year but must also include audited or reviewed *accounts for its most recent half year as well.
- (b) If the issuer applies for *quotation more than 6 months and 75 days after the end of its last financial year, audited or reviewed *accounts for its most recent half year (or longer period if available).
- (c) If the issuer has in the 12 months prior to applying for *quotation *acquired, or is proposing in connection with its application for *quotation to *acquire, another issuer or business that is significant in the context of the issuer:
 - a. Audited *accounts for the last 2 full financial years for that other issuer or business. If the issuer applies for *quotation less than 90 days after the end of the last financial year for that other issuer or

years to 1 year for investment companies and special purpose acquisition companies relying on the assets test. This is on the basis that the investment company and special purpose acquisition company may be newly established.

However, if the company is proposing in connection with its application for quotation to acquire, another issuer or business that is significant in the context of the issuer it must provide 2 years of audited accounts for the acquired asset. This is an anti-avoidance requirement.

It remains 3 years for issuers relying on the profits test as that test relies upon the issuer's main business activity must be the same as it was during the last 3 full financial years.

business, unless the other issuer or business has audited ⁺accounts for its latest full financial year, the ⁺accounts may be for the 2 years to the end of the previous financial year but must also include audited or reviewed ⁺accounts for its most recent half year as well;

- b. If the issuer applies for ⁺quotation more than 6 months and 75 days after the end of the last financial year for that other issuer or business, audited or reviewed ⁺accounts for that other issuer or business for its most recent half year (or longer period if available);
- (d) A reviewed pro forma statement of financial position. The review must be conducted by a registered company auditor (or, if the issuer is a ⁺foreign issuer, an overseas equivalent of a registered company auditor) or an independent accountant; and

The issuer must provide the audit report or review to PNGX.

The entity must have enough working capital to carry out its stated objectives. If the prospectus does not contain a

Replaced by the Working Capital Test in the Proposed Rules

statement that the entity has enough working capital, the entity must give POMSoX one from an independent expert.

The net tangible assets test for a mining exploration entity:

The entity must have at least K1 million (excluding loan funds) available to fund its stated objectives or exploration program. The amount must be available after allowing for the next full year's budgeted administration costs and the cost of acquiring plant, equipment and mining tenements. The cost of acquiring mining tenements includes the cost of acquiring and exercising an option over them.

Replaced by the Working Capital Test in the Proposed Rules

The net tangible assets test for a mining exploration entity:

The entity must have commitments for at least half of its cash and assets in a form readily convertible to cash. The commitments must be for the acquisition and exploration of mining tenements, or the acquisition of plant and equipment and may include the costs of capital raising. The cost of acquiring mining tenements includes the cost of acquiring and exercising an option over them.

Moved to the generic Conditions in Rule 1.9 to apply to all mining exploration entities and extended to apply to all oil and gas exploration entities also.

The net tangible assets test for a mining exploration entity:

The entity must give POMSoX a written statement from an independent expert that the entity has a satisfactory and clearly defined exploration and expenditure program which is reasonable having regard to its

Moved to the generic Conditions in Rule 1.9 to apply to all mining exploration entities and extended to apply to all oil and gas exploration entities also.

stated objectives; and that enough exploration has taken place in the past 2 years to justify the budgeted exploration and expenditure program.

Shareholder spread requirements

The Existing Rules require a new listing to have a shareholder spread of not less than 300 holders with a parcel of at least PGK 2,000 each.

Several years ago it was proposed by the exchange that the number be reduced to 50 shareholders but this was not adopted in the rules. Experience in other markets has shown that, whilst 50 shareholders may be appropriate for some SME markets with expectations of low liquidity, it is not appropriate for a national market where there is an expectation of a liquid market. Most companies listed on PNGX have in excess of 300 shareholders, many having several thousand.

PNGX acknowledges that the potential investor base in PNG is presently quite narrow. Whilst a large minimum number of shareholders serves to act as a proxy for both a measure of investor interest in the issuer as a proxy for suitability for listing and as a measure designed to encourage liquidity in the secondary market, 300 shareholders is arguably too high in the PNG context.

The minimum holding value of a shareholding for the purpose of satisfying the spread requirement is currently PGK 2,000. In order to make the market more accessible to new investors and hence to potentially increase liquidity and diversity of shareholdings, it is proposed to reduce the parcel size from PGK 2,000 to 1,000.

In summary, it is proposed to reduce the minimum required shareholder spread for the main class of securities to not less than 200 holders with a parcel of at least PGK 1,000 each.

A consequence of the reduction may be increased register administration costs. This can be mitigated by the company electing to set minimum subscriptions above PGK 1,000 in the primary market and brokers continuing practice of the minimum trade being PGK 2,000. The potential impact is considered appropriate to endeavour to increase liquidity, thereby reducing bid-ask spreads and reducing the cost of capital. To further reduce any adverse impact, it is also proposed to introduce a requirement that at least 20% of the issuer's free float be held by non-affiliated shareholders.

Bonds for new listings

It is proposed to introduce a requirement for a new Domestic Issuer and a new Foreign Issuer to pay a bond to PNGX. The proposed bond is PGK 20,000.

The purpose of the bond is to provide certainty of recovery of certain fees and charges of PNGX.

The bond will be held in trust for the benefit of the issuer. Interest earned on the trust funds will be paid to either the PNGX Compensation Fund for investor protection or to the Capital Market Development Fund for investor education.

Consultation Question 1

Do you have any comment on the proposed Chapter 1?
If you believe a rule could be improved, please identify the rule and outline why you believe it could be improved and what changes should be made.

If you do not support a rule or part of a rule, please identify the rule and outline why you do not support it and what changes should be made.

Consultation Question 1A

Do you have any recommendations for assessing eligibility for the market which might increase attractiveness and/or liquidity and which will maintain a market of integrity? A recommendation may apply to the BikMaket (Main Market) or the PasisMaket (Passage Market).

Chapter 2 – Quotation of additional securities

The chapter applies to the quotation of new securities post-admission to the official.

References to the ASX CHESS Rules have been deleted.

Subsequent issues of securities

Under the Existing Rules, an entity must apply for quotation of securities each time it issues new securities.

For ease of administration, the Proposed Rules only require application for quotation of a new class of securities when issued. An entity will not need to apply for quotation of securities in an existing quoted class each time it issues new securities. However, the entity will need to notify PNGX of any change to the number of securities (issue of new securities or cancellation of existing securities) whether the class of securities is quoted or not.

Similar to the spread requirement for an additional class of securities in Chapter 1, the spread requirement for a new class of securities post-admission will be 20 shareholders holding a parcel of at least PGK 1,000.

Consultation Question 2

Do you have any comment on the proposed Chapter 2?

If you believe a rule could be improved, please identify the rule and outline why you believe it could be improved and what changes should be made.

If you do not support a rule or part of a rule, please identify the rule and outline why you do not support it and what changes should be made.

Chapter 3 –Securities

References to partly paid securities in no liability companies have been deleted as the PNG Companies Act makes no reference to no liability companies. Reference to partly paid securities for limited liability companies has been retained.

Fair and orderly market requirement for all securities

PNGX has a statutory obligation to operate a fair and reasonable market. As set out in the introduction of the Proposed Rules it is impracticable and undesirable for the Listing Rules to attempt to govern all circumstances that may arise in commercial practice.

It is proposed to introduce a new Rule to the effect that the terms that apply to each class of securities must, in PNGX's opinion and as far as may be reasonably practicable, enable PNGX to provide an orderly and fair market in the securities.

Options

There is an argument that the rules relating to participation of options in pro rata issues, or adjustment of terms, in the existing rules are overly complex and difficult to administer. They could be considered "legacy rules" reflecting the way the ASX market has developed.

A simplification may be more appropriate to the current stage of development of the PNG market. As there are no quoted options on issue, there would be minimal need for grandfathering provisions to accommodate quoted options on issue at the time the Proposed Rules take effect. Simplifying these rules at this stage of the market's development allows the market to evolve in a manner best suited to PNG.

There is an argument that options should not participate in pro rata issues without exercising the option. This argument is based on the proposition that, as option holders have not committed any capital to the company, they should not be entitled to participate in the pro-rata issue without committing capital to the company. However, there is also an argument that some adjustment is required to acknowledge the changed pricing of the underlying securities as a result of the new issue and the impact that has on the pricing of an option.

In order to reduce complexity and acknowledge the interests of both shareholders and option holders it is proposed to amend the rules as follows:

Proposed Rule 3.18

An ⁺option must not confer the right to participate in a new issue without exercising the ⁺option.

Existing Rules

An option must not confer the right to participate in a new issue without exercising the option except in either of the following cases

Observations

Separate provisions relating to unquoted options deleted so that all options are treated in the same manner.

⁺ See the Definitions and Interpretation section for defined terms.

If the option was issued under a pro rata issue to the holders of ordinary securities, the option holder can participate in a new issue to the holders of the underlying securities.

If the option was issued with the approval of holders of ordinary securities, and is not in a class of quoted options, the option holder can participate in a new issue to the holders of the underlying securities at the same time and price as the holders of the underlying securities in accordance with the terms of the option. The notice of meeting must have contained a report by an independent expert on the effect of the proposed right of participation, and a voting exclusion statement.

Proposed Rule 3.19

An *option's terms must contain a statement of any rights the *option holder has to a change in the exercise price of the *option, or a change to the number of *underlying securities over which the *option can be exercised.

An option's terms must contain a statement of the rights the option holder has to participate in new issues without exercising the option, or a statement that the option holder cannot participate in new issues without exercising the option.

Proposed Rule 3.20

An *option must not confer the right to a change in exercise price, or a change to the number of *underlying securities over which it can be exercised unless the right is permitted under Rule 3.21

An option must not confer the right to a change in exercise price, or a change to the number of *underlying securities over which it can be exercised:

- a) if the option confers a right to participate in new issues without exercising the option, and
- b) unless the right is permitted under rule 6.22.

An option's terms must contain a statement of any rights the option holder has to a change in the exercise price of the option, or a change to the number of *underlying securities over which the option can be exercised.

Proposed Rule 3.21

An *option may confer the right to a change in its exercise price, or a change to the number of *underlying securities over which it can be exercised, in the following cases:

If there is a *pro rata issue (except a *bonus issue) to the holders of the *underlying securities, the exercise price of an *option may be reduced according to the following formula:

$$O(\text{new}) = O(\text{old}) - \left(\frac{E * (P - (S + D))}{N + 1} \right)$$

An option may confer the right to a change in its exercise price, or a change to the number of *underlying securities over which it can be exercised, in any of the following cases.

If there is a +pro rata issue (except a +bonus issue) to the holders of the *underlying securities, the exercise price of an option may be reduced according to the following formula.

Separate provisions relating to unquoted options deleted so that all options are treated in the same manner

$$O' = O - \frac{E[P-(S+D)]}{N+1}$$

O(new) = the new exercise price of the *option

O' = the new exercise price of the option. In the case of an option over a share, the new exercise price may not be reduced below the issue price of the share.

O(old) = the old exercise price of the *option

O = the Old exercise price of the option.

E = the number of *underlying securities into which one *option is exercisable

E = the number of *underlying securities into which one option is Exercisable.

P = the lesser of

- (a) the *volume weighted average market price per *security of the *underlying securities, calculated over the 5 *trading days ending on the day before the “ex rights” date or “ex entitlements” date; and
- (b) the subscription price for a *security under the *pro rata issue

P = the average *market price per share (weighted by reference to volume) of the *underlying securities during the 5 trading days ending on the day before the ex rights date or ex entitlements date.

S = the subscription price for a +security under the +pro rata issue.

D = the dividend due but not yet paid on the existing +underlying securities (except those to be issued under the +pro rata issue).

N = the number of +securities with rights or +entitlements that must be held to receive a right to one new +security;

S = the Subscription price for a +security under the +pro rata issue.

D = the Dividend (in the case of a trust, Distribution) due but not yet paid on the existing +underlying securities (except those to be issued under the +pro rata issue).

N = the Number of +securities with rights or entitlements that must be held to receive a right to one new +security.

As an alternative to using the formula in rule 6.22.2, if the option was issued with the approval of holders of +ordinary securities, and is not in a +class of +quoted options, the exercise price or number of +underlying securities may change if there is a +pro rata issue (except a +bonus issue) to the holders of the +underlying securities in accordance with the formula contained in the terms of the option. The notice of meeting must have contained a report by an independent expert on the effect of the proposed change, and a +voting exclusion statement.

If there is a +bonus issue to the holders of the +underlying securities, the number of +securities over which the +option is exercisable may be increased by the number of +securities which the holder of the +option would have received if the +option had been exercised before the +record date for the +bonus issue.

If there is a +bonus issue to the holders of the +underlying securities, the number of +securities over which the option is exercisable may be increased by the number of +securities which the holder of the option would have received if the option had been exercised before the

+record date for the +bonus issue.

Consultation Question 3

Do you have any comment on the proposed Chapter 3?

If you believe a rule could be improved, please identify the rule and outline why you believe it could be improved and what changes should be made.

If you do not support a rule or part of a rule, please identify the rule and outline why you do not support it and what changes should be made.

Chapter 4 - Continuous Disclosure

Continuous Disclosure

The Existing Rules contain continuous disclosure requirements as set out in Listing Rules 3.1. This will remain unchanged in new rule 4.1.

The Proposed Rules will contain an additional obligation in relation to false markets. The new Rule 4.3 will require that if PNGX considers that there is or is likely to be a false market in an entity's securities and asks the entity to give it information to correct or prevent a false market, the entity must immediately give PNGX that information.

Listing Rules 4.1 and 4.3 are of such fundamental and over-riding importance to the market that the Chapter 4 is limited to the continuous disclosure obligation. Notice of specific information is moved to Chapter 6

Consultation Question 4

Do you have any comment on the proposed Chapter 4?

If you believe a rule could be improved, please identify the rule and outline why you believe it could be improved and what changes should be made.

If you do not support a rule or part of a rule, please identify the rule and outline why you do not support it and what changes should be made.

Chapter 5 - Periodic Disclosure

Periodic Disclosure

It is proposed to make a number of changes in relation to the nature and timing of half yearly, preliminary final and annual reporting.

The Existing Rules contain prescribed formats for the reporting of half year and preliminary final results (Appendix 4B). It is proposed to discontinue the prescribed format and adopt a more general rule as set out in Appendices 5B and 5C. The advantage of this is that, whilst minimum content is prescribed, it would allow the issuer to lodge accounts in a format similar to the annual statutory accounts, a practice PNGX would encourage. There is an argument that if the statutory format is sufficient under the law, it should be sufficient under the Listing Rules. A disadvantage of this is that results would not be as readily comparable across issuers owing to differing formats, thereby requiring more analytical effort to perform comparisons.

It is also proposed to amend the timing for the lodgement of some periodic reports. The table below sets out the timing in the Existing Rules and the Proposed Rules:

	Existing Rules	Proposed Rules
Weekly NTA reporting	NA	9.45am Monday
Monthly NTA reporting	Within 14 days of end of month	Within 10 business days of end of month
Quarterly cashflow reporting	Within 1 month of the end of quarter	Within 1 month of the end of quarter
Quarterly activities reporting	Within 1 month of the end of quarter	Within 1 month of the end of quarter
Half year reporting	Within 75 days of the end of the half year	Within 75 days of the end of the half year
Preliminary final reporting	Within 75 days of the end of the half year	Within 75 days of the end of the half year
Annual statutory accounts	No later than the time lodged with the Registrar of Companies pursuant to the <i>Companies Act</i>	No later than the time lodged with the Registrar of Companies pursuant to the <i>Companies Act</i>
Annual report	Within 19 weeks of the end of the financial year	Within 5 months of the end of the financial year

The change for lodgement of monthly NTA reporting will not reduce the period but will increase it in the event of a public holiday, on the basis that public holidays are not business days. This will be to the benefit of issuers required to lodge monthly NTA reports.

The change for lodgement of annual reports will generally increase the period by at least a week. This will be to the benefit of issuers.

Consideration was given to reducing the period for lodgement of the preliminary final report from 75 days to 2 months (generally 59 days for an issuer with a 31 December balance date). This would generally align the requirements with the ASX Listing Rules. However, having considered the work involved in preparing the reports and, if necessary, undertaking audits or audit reviews, PNGX proposes to leave the timeframe at 75 days at this point in time.

Consultation Question 5

Do you have any comment on the proposed Chapter 5?

If you believe a rule could be improved, please identify the rule and outline why you believe it could be improved and what changes should be made.

If you do not support a rule or part of a rule, please identify the rule and outline why you do not support it and what changes should be made.

Chapter 6 – Disclosure of Event Specific Information

Buybacks

New requirements relating to disclosure of buy-backs are proposed to ensure that the market is fully informed of changes to capital and the extent to which the entity is active in the market buying back its securities.

Documents received about substantial security holdings

New Rules relating to disclosure of substantial holdings are proposed to ensure that the market is fully informed. The Proposed Rules work in conjunction with, but do not overlap, the requirements of the Capital Market Act.

There is no form for disclosure of substantial holdings currently prescribed by the Capital Market Act. PNGX will await the publication of the relevant Regulations in accordance with sections 402 and 403 of the Capital Market Act.

Section 402 of the Capital Market Act requires a substantial shareholder to make disclosures to PNGX. However, from time to time, a substantial shareholder may lodge a notice with the issuer but fail to make disclosures to PNGX. The Proposed Rules are designed to fill this information gap. The same principle applies to a Foreign Listing or Exempt Listing.

Trading Halts, Suspension and Reinstatement of Foreign Listings

A foreign listing for which PNGX is not the primary market may be subject to a trading halt or suspension in respect of its securities or a class of them. PNGX may or may not have a relationship with the foreign exchange, but the foreign exchange is under no obligation to advise PNGX of the trading halt or suspension.

The Proposed Rules place an obligation on the foreign listing to advise PNGX of trading halts or suspensions to enable PNGX to consider whether or not to similarly apply a trading halt or suspension to maintain a fair and orderly market.

Takeovers

The Capital Markets Act makes reference to a Takeovers Code. At present, no Takeovers Code is available. Any matter in these Rules relating to takeovers will be subject to further review upon publication of the Takeovers Code.

Consultation Question 6

Do you have any comment on the proposed Chapter 6?

If you believe a rule could be improved, please identify the rule and outline why you believe it could be improved and what changes should be made.

If you do not support a rule or part of a rule, please identify the rule and outline why you do not support it and what changes should be made.

Chapter 7 – Requirements for the Activities of special purpose acquisition companies

Activities and additional disclosures required by special purpose acquisition companies

The proposed requirements for the investment criteria for special purpose acquisition companies are designed for investor protection. They are based upon similar obligations developed by overseas markets to protect the assets of investors and ensure they have a voice in the application of those funds.

Similarly, the requirement that a special purpose acquisition company must complete a major transaction within 24 months of being categorised as a special purpose acquisition company by PNGX and that, in the event that a special purpose acquisition company has not completed a major transaction within 24 months then it must return all remaining capital (less sufficient capital to satisfy the solvency test in section 4 of the Companies Act) to security holders on a pro rata basis and convene a general meeting of ordinary securities to approve the appointment of a liquidator in accordance with the Companies Act are designed for investor protection.

Consultation Question 7

Do you have any comment on the proposed Chapter 7?

If you believe a rule could be improved, please identify the rule and outline why you believe it could be improved and what changes should be made.

If you do not support a rule or part of a rule, please identify the rule and outline why you do not support it and what changes should be made.

Chapter 8 – Requirements for Reporting by Mining Companies

Mining related rules

The Existing Rules contain highly technical and specific rules for:

- a) mining exploration entities; and
- b) mining production entities.

These rules remain unchanged in the Proposed Rules.

Consultation Question 8

Do you have any comment on the proposed Chapter 8?

If you believe a rule could be improved, please identify the rule and outline why you believe it could be improved and what changes should be made.

If you do not support a rule or part of a rule, please identify the rule and outline why you do not support it and what changes should be made.

Chapter 9 – Requirements for Reporting by Oil & Gas Companies

Oil & gas related rules

The Existing Rules contain highly technical and specific rules for:

- a) oil and gas exploration entities; and
- b) oil and gas production entities.

These rules remain unchanged in the Proposed Rules.

Consultation Question 9

Do you have any comment on the proposed Chapter 9?

If you believe a rule could be improved, please identify the rule and outline why you believe it could be improved and what changes should be made.

If you do not support a rule or part of a rule, please identify the rule and outline why you do not support it and what changes should be made.

Chapter 10 – Disclosure of Directors’ and CEO’s Dealings

Disclosure of director and CEO holdings

Section 126 of the Companies Act requires directors to disclose relevant interests in shares to the entity.

Sections 375 and 376 of the Capital Market Act require directors and the CEO to disclose their interests to the entity (unless exempted by SeCom in writing). Section 375 also requires notification to SeCom, although section 376 does not.

Neither the Companies Act nor the Capital Market Act require disclosure to the market.

The market derives considerable valuable information from the disclosure of director’s and CEO dealings and the timing of those dealings. Disclosure of director’s and CEO dealings, in conjunction with a trading policy, also serves to minimize the risk of insider dealing by directors and CEOs. PNGX considers disclosure of this information to be a material element of governance and maintaining confidence in the market.

It is proposed to introduce requirements for listed entities to have in place arrangements to obtain the relevant information, to enforce those arrangements and to disclose the information regarding dealing by director’s and CEOs to the market.

Neither the Companies Act nor the Capital Market Act specify the form of the notification required. In order to standardize the presentation of the relevant information and to make dealings readily traceable, PNGX proposes to specify the format of the notifications to the market.

Consultation Question 10

Do you have any comment on the proposed Chapter 10?

If you believe a rule could be improved, please identify the rule and outline why you believe it could be improved and what changes should be made.

If you do not support a rule or part of a rule, please identify the rule and outline why you do not support it and what changes should be made.

Chapter 11 – Issues of New Securities

Increase of new issue capacity from 15% to, up to, 30%

The Existing Rules limit the number of new equity securities an issuer may issue to 15% in any 12 month period, subject to a number of exceptions.

The current ASX listing rules, on which the Proposed Rules are based, permit an issuer to issue up to 15% in any 12 month period or, for “smaller” companies, up to 25% if shareholders approve at an annual general meeting.

PNGX proposes to expand the issuance capacity for all companies to 20% in any 12 month period, or, if shareholders approve at an annual general meeting, a higher percentage not exceeding 30%.

PNGX acknowledges that the potential investor base in PNG is quite narrow. PNGX also acknowledges that, historically, listed companies have very rarely raised new capital hence the provisions of the Existing Rules have been rarely relied upon. However, many potential listed companies in PNG are relatively small in size and have high needs to access capital for growth.

PNGX is proposing a 30% threshold as it closely aligns with the 33% threshold for control of a company pursuant to the *Capital Market Act*. By allowing shareholders to approve an issuance capacity of up to 30%, it allows an issuer to maximise its capital raising ability without compromising control of the issuer.

In order to have capacity to issue up to 30%, an issuer must obtain shareholder approval at an annual general meeting. The resolution must specify a percentage capacity, being a percentage between 20% and 30%. PNGX acknowledges that some shareholders may not be comfortable allowing an issuer to issue 30% each year. In some cases, shareholders may not be comfortable allowing a company to issue more than 20%. Hence, by requiring the issuer to prescribe a number between 20% and 30%, it allows scope for the issuer to negotiate an appropriate percentage with which shareholders would be comfortable prior to putting the relevant resolution to the AGM.

PNGX considers that this structure provides an appropriate balance between the needs of issuers to access capital in a timely manner and the needs of investors to have a voice in a matter which will result in dilution of their existing holdings.

Changes to the exceptions to the annual new issuance limit

It is proposed to expand the scope of exceptions to the limit on new issues of equity securities in any 12 month period and to make additional minor amendments.

The Existing Rules contain 12 exceptions. It is proposed to consolidate 2 and extend the number of exceptions to 15.

The Existing Rules contain an exception for issues to underwriters of pro rata issues on condition that the securities are issued to the underwriter within 15 business days of the close of the pro rata issue. It is proposed to reduce the time period to 10 business days (Exception 2). It is proposed to make the timeframe for issues to underwriters of any issue consistent at 10 business days throughout the Proposed Rules (Exceptions 5, 9 and 15).

The Existing Rules contain an exception for issues pursuant to a dividend plan on condition that the dividend plan was either established prior to the entity being listed and was disclosed in a prospectus or the dividend plan was approved by holders of ordinary securities. It is proposed to delete these conditions (Exception 8).

It is proposed to extend the exception for issues pursuant to a dividend plan to underwriters of dividend plans on condition that the dividend plan does not impose a limit on participation. This is on the basis that a dividend plan is akin to a pro rata issue, for which an exception already exists (Exception 9).

The Existing Rules contain two exceptions for issues pursuant to employee incentive schemes. It is proposed to consolidate these into one exception (Exception 10).

It is proposed to introduce an exception for issues to related parties which have received security holder approval in accordance with the Listing Rules (Exception 13). It could be interpreted that issues to related parties are already factored into calculations of the annual limit, however, the wording of the Existing Rule is limited to issues with security holder approval under Chapter 7 of the Existing Rules, whereas issues to related parties are captured under Chapter 10 of the Existing Rules. As issues to related parties are required to receive security holder approval, there appears no reason why they should not be explicitly captured in the exceptions.

It is proposed to introduce an exception for issues pursuant to a securities purchase plan (Exception 14). A securities purchase plan is a plan providing for the making by an entity of offers of securities to its existing security holders other than on a pro-rata basis and in which each offer is made on:

- a) the same terms and conditions;
- b) a non-renounceable basis; and
- c) the total application price for the securities acquired by any one holder in any 12-month period does not exceed PGK 30,000.

The exception will have limits that:

- a) a securities purchase plan issue is only made once in any 12 month period;
- b) the number of securities to be issued is not greater than the Annual New Issue Limit (ie 20% or the percentage, being not more than 30%, approved by securityholders at an Annual General Meeting);
- c) the issue price of the securities is at least 80% of the volume weighted average market price for securities in that class, calculated over the last 5 days on which sales in the securities were recorded, either before the day on which the issue was announced or before the day on which the issue was made.

It is proposed to introduce an exception for underwriters of a securities purchase plan (Exception 15).

A summary of the exceptions is presented below. For reference, it includes mapping against the exceptions in the version of the ASX Listing Rules on which the Proposed Rules are based:

Existing Rules Exception	Existing Rules	Proposed Rules	ASX Rules
1	An issue to holders of ordinary securities made under a pro rata issue and to holders of other equity securities to the extent that the terms of issue of the equity securities permit participation in the pro rata issue.	An issue to holders of ordinary securities made under a pro rata issue and to holders of other equity securities to the extent that the terms of issue of the equity securities permit participation in the pro rata issue.	An issue to holders of ordinary securities made under a pro rata issue and to holders of other equity securities to the extent that the terms of issue of the equity securities permit participation in the pro rata issue.
2	An issue under an underwriting agreement to an underwriter of a pro rata issue to holders of ordinary securities if the underwriter receives the securities within 15 business days after the close of the offer.	An issue under an underwriting agreement to an underwriter of a pro rata issue to holders of ordinary securities on the condition that the underwriter receives the securities not later than 10 business days after the close of the *pro rata issue.	An issue under an underwriting agreement to an underwriter of a pro rata issue to holders of ordinary securities if the underwriter receives the securities not later than 15 business days after the close of the offer.

Existing Rules Exception	Existing Rules	Proposed Rules	ASX Rules
3	An issue to make up the shortfall on a pro rata issue to holders of ordinary securities. The entity must make the issue within 3 months after the close of the offer, and the directors (in the case of a trust, the management company) must have stated as part of the offer that they reserve the right to issue the shortfall at their discretion. The issue price must not be less than the price at which the securities were offered under the pro rata issue.	An issue to make up the shortfall on a pro rata issue to holders of ordinary securities on the condition that: <ul style="list-style-type: none"> a) the directors of the entity have stated as part of the offer that they reserve the right to issue the shortfall at their discretion; b) the issue price is not less than the price at which the *securities were offered under the *pro rata issue; and c) the entity makes the issue not later than 3 months after the close of the *pro rata issue. 	An issue to make up the shortfall on a pro rata issue to holders of ordinary securities. The entity must make the issue not later than 3 months after the close of the offer, and the directors of the entity (in the case of a trust, the responsible entity) must have stated as part of the offer that they reserve the right to issue the shortfall at their discretion. The issue price must not be less than the price at which the securities were offered under the pro rata issue.
4	An issue on the conversion of convertible securities. The entity must have issued the convertible securities before it was listed or complied with the listing rules when it issued the convertible securities.	An issue on the conversion of convertible securities on the condition that: <ul style="list-style-type: none"> a) the entity issued the convertible securities before it was listed; or b) the entity complied with the Listing Rules when it issued the convertible securities. 	An issue on the conversion of convertible securities. The entity must have issued the convertible securities before it was listed or complied with the listing rules when it issued the convertible securities.
5	An issue under a takeover offer that is required to comply with a takeovers code under Part IX.3 of the Securities Act 1997, under an amalgamation under Part XIV of the Companies Act 1997 or under an arrangement, amalgamation or compromise under Part XVI of the Companies Act 1997.	An issue under a takeover bid or under a merger by way of scheme of arrangement on condition that the issue is not being made under a reverse takeover.	An issue under a takeover bid or under a merger by way of scheme of arrangement under Part 5.1 of the Corporations Act. Exception 5 is not available if the issue is being made under a reverse takeover.
6	An issue to fund the cash consideration for valid acceptances of a takeover offer that is required to comply with a takeovers code under Part IX.3 of the Securities Act 1997, an amalgamation under Part XIV of the Companies Act 1997, or under an arrangement, amalgamation or compromise under Part XVI of the Companies Act 1997, if the terms of the issue are disclosed in the takeover, amalgamation, arrangement or compromise documents.	An issue to fund the cash consideration payable under a takeover bid or under a merger by way of scheme of arrangement on the condition that: <ul style="list-style-type: none"> a) the terms of the issue are disclosed in the takeover or scheme documents; and b) the issue is not being made to fund a reverse takeover. 	An issue to fund the cash consideration payable under a takeover bid or under a merger by way of scheme of arrangement under Part 5.1 of the Corporations Act where the terms of the issue are disclosed in the takeover or scheme documents. Exception 6 is not available if the issue is being made to fund a reverse takeover.
7	An issue under a dividend or distribution plan, excluding an	An issue under a dividend plan on the condition that the dividend plan does not impose a limit on	An issue under a dividend or distribution plan excluding an issue to the plan's underwriters.

Existing Rules Exception	Existing Rules	Proposed Rules	ASX Rules
	<p>issue to the plan's underwriters. Exception 7 is only available in the following cases.</p> <ul style="list-style-type: none"> a) In the case of a plan that was established <i>before</i> the entity was listed - a summary of the plan's terms was set out in the prospectus. b) In the case of a plan that was established <i>after</i> the entity was listed - the plan's terms were approved by holders of ordinary securities. 	<p>participation other than as permitted by Rule 11.17 Condition 3(b).</p> <p>An issue to the underwriter of a dividend plan on the condition that:</p> <ul style="list-style-type: none"> a) the dividend plan does not impose a limit on participation other than as permitted by Rule 11.17 Condition 3; b) the underwriter receives the underlying securities within 10 business days after this issue under the dividend plan; and c) the underwriting agreement was disclosed under Rule 6.1.10. 	<p>Exception 7 is only available where the dividend or distribution plan does not impose a limit on participation.</p>
8	<p>An issue under an employee incentive scheme that was established within 3 years before the date of the issue. Exception 8 is only available in the following cases.</p> <ul style="list-style-type: none"> a) In the case of a scheme established <i>before</i> the entity was listed - a summary of the terms of the scheme were set out in the prospectus. b) In the case of a scheme established <i>after</i> the entity was listed - the scheme was approved by holders of ordinary securities under rule 7.37 or 7.39. 	NA	Deleted

Existing Rules Exception 9	Existing Rules	Proposed Rules	ASX Rules
	<p>An issue under an employee incentive scheme that was established more than 3 years before the date of the issue. Exception 9 is only available if holders of ordinary securities have approved the issue of securities under the scheme as an exception to this rule no more than 3 years before the date of issue. The notice of meeting must have included each of the following.</p> <ul style="list-style-type: none"> a) A summary of the terms of the scheme. b) The number of securities issued under the scheme since the date of the last approval. c) A voting exclusion statement. 	<p>An issue under an employee incentive scheme on the condition that:</p> <ul style="list-style-type: none"> a) in the case of an employee incentive scheme established before the entity's ordinary securities were first quoted and the entity's ordinary securities were first quoted less than 3 years before the date of issue, a summary of the terms of the employee incentive scheme were set out in the prospectus; or b) in the case of an employee incentive scheme established after the entity's ordinary securities were first quoted, holders of ordinary securities have approved the issue of securities under the employee incentive scheme in accordance with Rule 11.7. 	<p>An issue under an employee incentive scheme if within 3 years before the issue date one of the following occurred.</p> <ul style="list-style-type: none"> • In the case of a scheme established before the entity was listed — a summary of the terms of the scheme were set out in the prospectus, PDS or information memorandum. • Holders of ordinary securities have approved the issue of securities under the scheme as an exception to this rule. The notice of meeting must have included each of the following. • A summary of the terms of the scheme. • The number of securities issued under the scheme since the date of the last approval. • A voting exclusion statement.
10	<p>An issue of preference shares which do not have any rights of conversion into another class of equity security. The preference shares must comply with Chapter 6.</p>	<p>An issue of preference shares on the condition that the preference shares:</p> <ul style="list-style-type: none"> a) comply with Chapter 3; and b) do not have any rights of conversion into another class of equity security. 	<p>An issue of preference shares which do not have any rights of conversion into another class of equity security. The preference shares must comply with chapter 6.</p>
11	<p>The reissue or sale of forfeited shares within 6 weeks after the day on which the call was due and payable.</p>	<p>The reissue or sale of forfeited shares within 6 weeks after the day on which the call was due and payable.</p>	<p>The reissue or sale of forfeited shares within 6 weeks after the day on which the call was due and payable.</p>
12	<p>An issue on the exercise of options to an underwriter of the exercise. Exception 12 is only available if each of the following applies.</p> <ul style="list-style-type: none"> a) The entity complied with the listing rules when it issued the options. b) The underwriter receives the underlying securities 	<p>An issue to an underwriter of the exercise of a class of options on the conditions that:</p> <ul style="list-style-type: none"> a) the entity complied with the Listing Rules when it issued the options; b) the underwriter receives the underlying securities within 10 business days after expiry of the options; and 	<p>An issue on the exercise of options to an underwriter of the exercise. Exception 12 is only available if each of the following applies.</p> <ul style="list-style-type: none"> a) The entity complied with the listing rules when it issued the options. b) The underwriter receives the underlying securities within 10 business days after expiry of the options. c) The underwriting agreement was disclosed under rule 3.11.3.

Existing Rules Exception	Existing Rules	Proposed Rules	ASX Rules
	<p>within 10 ⁺business days after expiry of the options.</p> <p>c) The underwriting agreement was disclosed under rule 3.11.3.</p>	<p>c) the underwriting agreement was disclosed under Rule 6.3.2</p>	
		<p>An issue made with the approval of holders of ordinary securities under Listing Rule 14.15 Exception 4 or Exception 10 on condition that:</p> <p>a) the notice of meeting contains all the information required by Rule 11.6 and Rules 14.19 or 14.22 (as the case may be); and</p> <p>b) the notice of meeting states to the effect that approval under Listing Rules 14.19 or 14.22 (as the case may be), also constitutes approval of an exempt issue for the purposes of the Annual New Issue Limit applicable under Rule 11.1.1.</p>	<p>An issue under an agreement to issue securities. The entity must have complied with the listing rules when it entered into the agreement to issue the securities.</p> <p>An issue made with the approval of holders of ordinary securities under listing rule 10.11 or 10.14. The notice of meeting must state that if approval is given under listing rule 10.11 or 10.14 (as the case may be), approval is not required under listing rule 7.1.</p>
		<p>An issue of securities under a securities purchase plan on condition that:</p> <p>a) a securities purchase plan issue is only made once in any 12 month period;</p> <p>b) the number of securities to be issued is not greater than the Annual New Issue Limit applicable under Rule 11.1.1;</p> <p>c) the issue price of the securities is at least 80% of the volume weighted average market price for securities in that class, calculated over the last 5 days on which sales in</p>	<p>An issue of securities under a security purchase plan, excluding an issue to the plan's underwriters. Exception 15 is only available once in any 12 month period and if both of the following apply:</p> <ul style="list-style-type: none"> • The number of securities to be issued is not greater than 30% of the number of fully paid ordinary securities already on issue. • The issue price of the securities is at least 80% of the volume weighted average market price for securities in that class, calculated over the last 5 days on which sales in the securities were recorded, either before the day on which the

Existing Rules Exception	Existing Rules	Proposed Rules	ASX Rules
		<p>the securities were recorded, either before the day on which the issue was announced or before the day on which the issue was made.</p> <p>An issue to the underwriter of a securities purchase plan on condition that:</p> <ul style="list-style-type: none"> a) the underwriting agreement is disclosed; and b) the underwriter receives the securities within 10 business days after expiry of the offer. 	<p>issue was announced or before the day on which the issue was made.</p> <p>An issue of securities approved for the purposes of Item 7 of section 611 of the Corporations Act.</p>

As set out at the commencement of this consultation paper, the Proposed Rules rule intended to meet the needs of PNG companies and investors while generally aligning with the ASX Rules to reduce compliance costs.

However, the annual issuance capacity is a complex rule which can be difficult to administer.

From a market policy perspective it is generally acknowledged that there is a need to balance protecting the interests of existing holders from unwarranted dilution (for example, pro-rata issues), allowing a company to quickly raise capital (for example, placements), allowing a company to compete with unlisted companies (for example, allowing the issuance of shares in consideration for, or to fund, a takeover) and allowing a company to maximise its capital raising opportunities (for example, providing exemptions for issues to underwriters).

Other markets have approached issuance capacity in a range of different ways. Some have a limit on any issuance, no matter how it is done unless shareholders explicitly approve it. Others have an annual limit which is approved by shareholders no matter how the issues are done. Some require that shareholders be offered first right to any placement. Others will set an annual limit by reference to the number of shares on issue at balance date (as opposed to the Existing Rules and Proposed Rules which are on a rolling 12 months basis).

Any material change in policy will require detailed consideration and may not be possible in the timeframe for publication of the Proposed Rules. However, in the interests of ensuring the PNGX Rules suits the competing needs of stakeholders identified above, PNGX invites comments on whether alternate policy models or simplification of the existing model would be appropriate.

Consultation Question 11	<p>Do you have any comment on the proposed Chapter 11?</p> <p>If you believe a rule could be improved, please identify the rule and outline why you believe it could be improved and what changes should be made.</p> <p>If you do not support a rule or part of a rule, please identify the rule and outline why you do not support it and what changes should be made.</p>
Consultation Question 11A	<p>Do you wish to propose an alternate model for managing new issues of securities? If so, please set out the policy underlying your proposal, how</p>

it meets the competing needs of stakeholders in the market and why it would be preferable to the existing policy

Chapter 12 – Changes to Capital

New issue timetables

Companies dual listed on ASX will have the benefit of multiple forms of new issues which include an element of pro-rata issue to existing shareholders. Many of these are designed to cater to accelerated capital raising timetables to meet the needs of sophisticated institutional investors.

PNGX has taken the view that the PNG capital market is not sufficiently developed at this point in time to require those additional forms of new issues. Hence, they have not been included in the Proposed Rules. Paring the timetables back to the basic timetables also allows the PNG market to adopt new issuance methods best suited to its own market rather than “locking in” processes from another market.

The table below sets out the differences in the timetables included in the ASX Listing Rules and those included in the Proposed Rules.

Issue Type	ASX Rules	Proposed Rules
Bonus Issues	X	X
Standard pro rata issues (non-renounceable)	X	X
Standard pro rata issues (renounceable)	X	X
Accelerated non-renounceable entitlement offers	X	-
Accelerated renounceable entitlement offers and simultaneous accelerated renounceable entitlement offers (eg RAPIDS, AREO, SAREO offers)	X	-
Accelerated renounceable entitlement offers with retail rights trading (eg PAITREO offers)	X	-
Security purchase plans	X	X

Consultation Question 12

Do you have any comment on the proposed Chapter 12?

If you believe a rule could be improved, please identify the rule and outline why you believe it could be improved and what changes should be made.

If you do not support a rule or part of a rule, please identify the rule and outline why you do not support it and what changes should be made.

Chapter 13 – Restricted Securities

Restricted Securities

The Proposed Rules have adopted the restricted securities framework from the ASX Listing Rules. However, PNGX is proposing a different escrow period structure to that set out in the ASX Listing Rules. The proposed new structure is set out in the matrix in Appendix 13A.

The primary purpose of escrow restrictions is to allow the market sufficient time to reasonably ascribe a value to intangible assets or assets which cannot be readily valued before the security holder can realise the value of those securities. The primary example is the escrowing of securities issued in consideration for the purchase of a mining tenement until such time as the market has sufficient information by way of quarterly exploration reports to value the tenement. The escrow period has generally been 12 or 24 months on some or all of the securities.

Other markets address the same issue in different ways.

The method proposed in the Proposed Rules is to set a fixed 18 month escrow period in all cases but allow a graduated release of the restricted securities over time. The proposed model would restrict 100% of the securities for the first 3 months, then allow the release of 10% of the securities per quarter for the following 15 months (that is, 10% at the end of each of the 3rd, 6th, 9th, 12th and 15th month). The final 50% would be released at the conclusion of the 18 month period. This alternate method simplifies and standardizes the escrow period, allows the vendor to potentially realise value over time, adds to the potential liquidity of the market yet still provides a sufficient period of time for a valuation for the relevant assets to be determined by the market prior to the vendor being permitted to realise full value for their securities.

A comparison of the current and proposed restrictions in Appendix 13A would be as follows:

Time of issue	*Person	Consideration for issue	Escrow period in the Existing Rules (unless PNGX fixes a different period)	Escrow period in the Proposed Rules (unless PNGX fixes a different number)
Before admission.	Seed capitalist who is one of the following at the time the entity applies for admission: <ul style="list-style-type: none"> A *related party of the entity. A *promoter. 	<ul style="list-style-type: none"> Cash. Conversion of debt to equity. 	24 months commencing on the date on which *quotation of *securities commence.	100% for 3 months commencing on the date on which *quotation of *securities commence.
	Seed capitalist who is not one of the following at the time the entity applies for admission: <ul style="list-style-type: none"> A *related party of the entity. A *promoter 	<ul style="list-style-type: none"> Cash. Conversion of debt to equity. 	12 months commencing on the date on which the *restricted securities are issued.	100% for 3 months commencing on the date on which *quotation of *securities commence.

Time of issue	+Person	Consideration for issue	Escrow period in the Existing Rules (unless PNGX fixes a different period)	Escrow period in the Proposed Rules (unless PNGX fixes a different number)
	+Promoter.	<ul style="list-style-type: none"> Services. Subscription for +securities using cash paid for services. 	24 months commencing on the date on which +quotation of +securities commences.	<p>10% of the securities will be released after 3 months.</p> <p>10% of the securities will be released each 3 months thereafter.</p>
	A professional or consultant to the entity.	<ul style="list-style-type: none"> Services. Subscription for +securities under relevant agreement to use cash paid for services. 	24 months commencing on the date on which +quotation of +securities commences.	The final 50% will be released at the conclusion of the 18 th month
	A +person who is one of the following. <ul style="list-style-type: none"> A +related party of the entity. A +promoter. 	<ul style="list-style-type: none"> +Employee incentive scheme. 	24 months commencing on the date on which +quotation of +securities commences.	
	Vendor who is one of the following at the time of the +acquisition of the +classified asset. <ul style="list-style-type: none"> A +related party of the entity. A +promoter.	<ul style="list-style-type: none"> 	24 months commencing on the date on which +quotation of +securities commences.	
	Vendor who is <i>not</i> one of the following at the time of the +acquisition of the +classified asset. <ul style="list-style-type: none"> A +related party of the entity. A +promoter.	<ul style="list-style-type: none"> 	12 months commencing on the date on which +restricted securities are issued.	
	Any +person to whom +restricted securities are transferred.	<ul style="list-style-type: none"> Not applicable. 	For the balance of the escrow period that applies to the +restricted securities.	For the balance of the escrow period that applies to the +restricted securities.
After admission.	Vendor who is a +person referred to	<ul style="list-style-type: none"> +Classified assets. 	12 months commencing on the	100% for 3 months commencing on the

Time of issue	+Person	Consideration for issue	Escrow period in the Existing Rules (unless PNGX fixes a different period)	Escrow period in the Proposed Rules (unless PNGX fixes a different number)
	in rule 10.1 at the time of the +acquisition of the +classified asset.	<ul style="list-style-type: none"> Subscription for +securities using cash paid for +classified assets. 	<p>date on which the last of the following events occurs.</p> <ul style="list-style-type: none"> The +restricted securities are issued. All restriction agreements are entered into. 	<p>date on which the last of the following events occurs:</p> <ul style="list-style-type: none"> The +restricted securities are issued; or All restriction agreements are entered into. <p>10% of the securities will be released each 3 months for the following 15 months.</p> <p>The final 50% will be released at the conclusion of the 18th month</p>
	A vendor who is <i>not</i> a +person referred to in rule 10.1 at the time of the +acquisition of the +classified asset.	<ul style="list-style-type: none"> +Classified assets. Subscription for +securities under a relevant agreement to use cash paid for +classified assets. 	<p>12 months commencing on the date on which the last of the following events occurs.</p> <ul style="list-style-type: none"> The +restricted securities are issued. <p>All restriction agreements are entered into.</p>	<p>100% for 3 months commencing on the date on which +quotation of +securities commence.</p> <p>25% of the securities will be released after 3 months.</p> <p>25% of the securities will be released each 3 months thereafter.</p>
Before or after admission.	Any + person.	<ul style="list-style-type: none"> Substitution for +restricted securities on a reorganisation. A +bonus issue in relation to +restricted securities. The conversion of +restricted securities. Payment of any outstanding amount on a partly paid +restricted security. 	For the balance of the escrow period that applies to the initial +restricted securities.	For the balance of the escrow period that applies to the initial +restricted securities.

Consultation Question 13

Do you have any comment on the proposed Chapter 13?

If you believe a rule could be improved, please identify the rule and outline why you believe it could be improved and what changes should be made.

If you do not support a rule or part of a rule, please identify the rule and outline why you do not support it and what changes should be made.

Chapter 14 – Transactions with Related Parties

Related Party

Chapter 14 applies to transactions with related parties.

It is proposed to amend the definition of “related party” to “related entity”, and hence the scope of the Proposed Rules to the following effect:

Proposed Rules	Existing Rules	Observations
as defined in section 346(5) of the Companies Act.	<ul style="list-style-type: none">a) in relation to a body corporate, the meaning given to "related company" in section 2(3) of the Companies Act 1997.b) in relation to a trust, the management company, trustee and their related parties.c) in relation to a person:<ul style="list-style-type: none">1. his or her spouse, de facto spouse, parent, son, or daughter, or a spouse or de facto spouse of that person;2. an entity over which one or more of the persons referred to in paragraph (i) has control;3. an entity that he or she controls, or its parent entity or sibling entity;4. a person who acts, or proposes to act, in concert with anyone referred to above;5. a person who was a related party in the previous 6 months, or who would be a related party in the future, under the tests in section 2(3) of the Companies Act 1997 (applied with any necessary adaptation).	

In section 346(5) “related entity” in relation to a company means–

- a) a person who was, at the time when the transaction was entered into, a director of the company, or a nominee or relative of or a trustee for, or a trustee for a relative of, a director of the company; or
- b) a person, or a relative of a person, who, at the time when the transaction was entered into, had control of the company; or
- c) another company that was, at the time when the transaction was entered into, controlled by a director of the company, or a nominee or relative of or a trustee for, or a trustee for a relative of, a director of the company; or
- d) another company, that at the time when the transaction was entered into, was a related company.

In Section 2(3), a corporation is related to another corporation where–

- a) the other corporation is its holding corporation or subsidiary; or
 - b) more than half of the issued shares of the corporation, other than shares that carry no right to participate beyond a specified amount in a distribution of either profits or capital, is held by the other corporation and corporations related to that other corporation (whether directly or indirectly, but other than in a fiduciary capacity); or
 - c) more than half of the issued shares, other than shares that carry no right to participate beyond a specified amount in a distribution of either profits or capital, of each of them is held by members of the other (whether directly or indirectly, but other than in a fiduciary capacity); or
 - d) the businesses of the corporations have been so carried on that the separate business of each corporation, or a substantial part of it, is not readily identifiable; or
 - e) there is another corporation to which both corporations are related,
- and “related company” and “related corporation” have a corresponding meaning.

The amendment is consistent with the drafting intent that, if a term in the Companies Act of the Capital Market Act is proximate to the intent of the Listing Rules, the term in the legislation should be adopted to promote consistency, reduce the scope for uncertainty and reduce compliance costs.

Consultation Question 14

Do you have any comment on the proposed Chapter 14?

If you believe a rule could be improved, please identify the rule and outline why you believe it could be improved and what changes should be made.

If you do not support a rule or part of a rule, please identify the rule and outline why you do not support it and what changes should be made.

Chapter 15 – Major Transactions

Major Transactions

The Existing Rules require that if “an entity proposes to make a significant change, either directly or indirectly, to the nature or scale of its activities, it must provide full details to POMSoX as soon as practicable. It must do so in any event before making the change.”

What constitutes a “significant change” is not defined.

Section 110 of the Companies Act also requires approval of a major transaction. A company shall not enter into a major transaction unless the transaction is–

- (a) approved by special resolution; or
- (b) contingent on approval by special resolution.

Major transaction, in relation to a company, means–

- a) the acquisition of, or an agreement to acquire, whether contingent or not, assets the value of which is more than half the value of the assets of the company before the acquisition; or
- b) the disposition of, or an agreement to dispose of, whether contingent or not, assets of the company the value of which is more than half the value of the assets of the company before the disposition; or
- c) a transaction which has or is likely to have the effect of the company acquiring rights or interests or incurring obligations or liabilities the value of which is more than half the value of the assets of the company before the transaction.

Nothing in Paragraph (c) of the definition of the term “major transaction” applies by reason only of the company giving, or entering into an agreement to give, a floating charge secured over the assets of the company the value of which is more than half the value of the assets of the company for the purpose of securing the repayment of money or the performance of an obligation.

The benefit of adopting the term major transaction is that what constitutes a major transaction is quantified.

Ordinarily, as the primary obligations in relation to a major transaction are set out in the Companies Act, they would not be replicated in the Listing Rules. However, it is arguable that the Companies Act applies to a single transaction. In order to apply anti-avoidance provisions, section 110 is replicated in Rule 15.1 and an anti-avoidance provision is adopted in Rule 15.2. Consistent with similar requirements in the Listing Rules, a voting exclusion requirement also applies.

The Rule is also included as there is considerable overlap between the concepts of major transactions and backdoor listings (Chapter 16).

The amendment is consistent with the drafting intent that, if a term in the Companies Act of the Capital Market Act is proximate to the intent of the Listing Rules, the term in the legislation should be adopted to promote consistency, reduce the scope for uncertainty and reduce compliance costs.

Consultation Question 15

Do you have any comment on the proposed Chapter 15?

If you believe a rule could be improved, please identify the rule and outline why you believe it could be improved and what changes should be made.

If you do not support a rule or part of a rule, please identify the rule and outline why you do not support it and what changes should be made.

Chapter 16 – Backdoor Listings

Backdoor listings

This chapter sets out the obligation to satisfy the requirements of Chapters 1, 2 and 3 if an entity engages in a backdoor listing.

A backdoor listing is defined to mean a transaction, or a series of related transactions, entered into by an entity which would result in a significant change:

- (a) in the ownership of a majority of the +equity securities carrying votes; and
- (b) either directly or indirectly, in the nature or scale of its activities, including through the acquisition of a new business.

The term “backdoor listing” refers to a process where someone seeking a listing does so by vending an existing unlisted company or business into an existing listed entity rather than the more conventional process through the “front door” by applying for quotation under Chapter 1.

A backdoor listing can take a number of forms including the listed entity:

- a) acquiring an unlisted company or business in return for either:
 - i. an issue of securities to the vendor(s) company or business. The issue of securities may be accompanied by cash payments or other form of consideration; or
 - ii. a payment of cash to the vendors in circumstances where the cash is raised through an offer of securities by the listed entity and the vendors (or their associates) potentially participating in the offering so that they receive an equity interest in the listed entity; or
- b) merging with an unlisted entity via a scheme of arrangement with the scheme providing for an issue of securities by the listed entity to the owners of the unlisted listed company.

Irrespective of the mechanism, a backdoor listing involves a significant change to the nature and/or scale of the activities of the listed entity.

Examples of situations giving rise to a backdoor listing would include the listed entity having:

- a) dissipated assets through ongoing losses or unsuccessful exploration activities;
- b) financial difficulties and entering administration or receivership;
- c) to downsize the scale of its operations to reduce debt; or
- d) relatively small scale operations and not achieving its targeted growth

and then engaging in transactions which would result in a significant change to the nature and/or scale of the activities.

More specific examples would include:

- a) a mining exploration company, having exhausted its financial resources, acquiring a new business to become predominantly a bio-technology company; or
- b) a trucking company, having financial difficulties, acquiring a new business to become a hospitality company.

However, a trucking company having financial difficulties and acquiring an airline business (ie, remaining in the transport or logistics industry) may, or may not, be considered a backdoor listing depending upon specific circumstances.

The adoption of specific rules addressing backdoor listings is, in effect, an anti-avoidance mechanism.

Consultation Question 16

Do you have any comment on the proposed Chapter 16?

If you believe a rule could be improved, please identify the rule and outline why you believe it could be improved and what changes should be made.

If you do not support a rule or part of a rule, please identify the rule and outline why you do not support it and what changes should be made.

Chapter 17 – Corporate Governance

Corporate Governance

The Existing Rules contain limited requirements for adoption or disclosure of corporate governance practices (Appendix 4A).

Governance practices and, in particular, quality governance practices are a key factor given consideration by investors. This includes the adoption of quality corporate governance policies and robust adherence to those policies.

Governance is one element of the increasing focus upon Environmental, Social and Governance (ESG) reporting. ESG reporting is used by investors to evaluate companies on how far advanced they are with sustainability.

Those companies which are dual listed on ASX have significant corporate governance disclosure obligations.

PNGX considers it appropriate to adopt mandatory governance disclosure requirements for companies listed on its market. Over the coming 12 months PNGX will also provide guidance on voluntary ESG reporting.

The standards of corporate governance must be appropriate to the nature and maturity of the PNG market.

Sections 375 and 376 of the *Capital Market Act* introduced an element of corporate governance standards relating to disclosure of the interests of directors and CEOs. Whilst those sections require disclosure by the directors and CEO to the entity, notwithstanding the intent set out in section 374(1) that the information also be available to the market, there is no obligation in the *Capital Market Act* to notify PNGX. Chapter 10 addresses that omission.

Section 374(1) of the *Capital Market Act* also expresses an intent that the market be able to check trading by directors and CEOs against the timing of material information becoming available to the market. The intent is to preclude insider trading by directors and CEOs from the market, a practice which could significantly diminish the integrity and reputation of the market thereby increasing the cost of capital for all listed companies. Accordingly, PNGX proposes to introduce a requirement that all domestic and foreign companies (but not exempt foreign companies) adopt and disclose a trading policy. The trading policy would apply to all key management personnel (as that term is defined in International Accounting Standard IAS 24) and require the defining of prohibited trading periods

The Proposed Rules refer to reporting corporate governance matters as set out in the PNGX Corporate Governance Standards. These standards are presently under development with the assistance of the International Finance Corporation and will be made available for comment. If their development is sufficiently progressed, they will be introduced in proximity to the commencement of the Proposed Rules. If not, the corporate governance disclosure requirements in the Existing Rules will be maintained until the new standards can be introduced.

The standards of corporate governance must be appropriate to the nature and maturity of the PNG market. The PNGX Corporate Governance Standards will be standards drafted by PNGX in consultation with stakeholders. Hence, the revised Corporate Governance Standards may or may not align with the ASX Corporate Governance Standards.

The Proposed Rules also require disclosure of a trading policy. The mandatory elements of a trading policy are set out in the Proposed Rules and it is anticipated that further guidance will be established, in consultation with

stakeholders, in the Corporate Governance Standards. If not, then they will be established in a PNGX Guidance Note.

A further component of corporate governance is the quality and experience of the directors of the listed issuer. The Existing Rules do not contain any provisions in this regard. It is important to investors and the quality of the market that listed issuers are lead by fit and proper directors with experience, expertise and credibility appropriate to the business of the listed issuer. It is proposed to introduce a rule requiring that the issuer have internal processes to ensure that each director is fit and proper with appropriate experience, expertise and credibility. It is anticipated that further guidance will be established, in consultation with stakeholders, in the Corporate Governance Standards.

Consultation Question 17

Do you have any comment on the proposed Chapter 17?

If you believe a rule could be improved, please identify the rule and outline why you believe it could be improved and what changes should be made.

If you do not support a rule or part of a rule, please identify the rule and outline why you do not support it and what changes should be made.

Chapter 18 – Constitutions

Addressing issues regarding uncontactable shareholders

Market feedback indicates that there are a large number of uncontactable shareholders in the PNG market. This has resulted in returned mail to issuers, large numbers of unbanked dividend payments and high administration costs for issuers.

In addition to the current provisions for divesting small shareholdings, PNGX is considering mechanisms to manage this issue without disenfranchising shareholders and denying them value for their investments. It is proposed to permit deemed dividend re-investment plan participation by uncontactable shareholders.

The proposal for deemed dividend re-investment plan participation by uncontactable shareholders would permit an issuer to include provisions in its constitution to permit it to deem an uncontactable shareholder to participate in a dividend re-investment plan. This has the benefit of converting unrepresented dividend cheque payments from uncollected monies (with the potential for fraud) into equity holdings. It does not deny shareholders value for their investment and, in many cases, may increase the value of their investment. Again, the term “consistently uncontactable” would be to the effect that dividend payments have remained uncollected by the security holder for a period of at least 3 consecutive years. The proposal reduces the risks of fraud to the issuer but does not reduce the number of uncontactable shareholders.

PNGX has considered mandating electronic funds transfer for payment of dividends (and other cash entitlements) to shareholders. It has been suggested that this will reduce fraud, improve timely access to funds by shareholders, increase shareholder engagement, reduce the number of uncontactable shareholders as bank details change less frequently than address details and reduce administrative cost and risk for issuers.

It is not proposed to proceed with mandating electronic funds transfer for payment of dividends (and other cash entitlements) as this could be implemented by an issuer at its own discretion without it being contained in the Listing Rules.

Director’s interests

Section 122 of the Companies Act requires that Subject to the constitution of the company, a director of a company who is interested in a transaction entered into, or to be entered into, by the company, may–

- a) vote on a matter relating to the transaction; and
 - b) attend a meeting of directors at which a matter relating to the transaction arises and be included among the directors present at the meeting for the purpose of a quorum; and
 - c) sign a document relating to the transaction on behalf of the company; and
 - d) do any other thing in his capacity as a director in relation to the transaction,
- as if the director were not interested in the transaction.

It is proposed that the Listing Rules require that a director of a company who is interested in a transaction entered into, or to be entered into, by the company, may not do the things set out in section 122.

The purpose of the proposed listing rule is to promote quality corporate governance in listed companies, given that directors of those companies are acting as custodians of public investment.

Management Agreements

In some circumstances, management agreements with third parties are entered into to manage the affairs of a listed entity. For example, a management company may be appointed to manage the affairs of a property trust or a management company may be appointed to manage the affairs of a special purpose acquisition company or investment company.

There is a risk that a management agreement can be used to entrench the position of the external manager to the potential detriment of investors. For example, in the event of poor performance, shareholders have the ability to remove directors, but may not have the ability to remove an external manager or may not be able to do so without significant financial penalty.

However, from a commercial perspective, an external manager needs comfort that the term of their appointment cannot be unreasonably terminated for, for example, short term market performance outside their control. IN some instances, a reasonable period of time is required for an external manager to deliver the objectives of the entity they are managing, for example, property development, which requires both time and investment by the external manager.

It is proposed to introduce rules to balance the competing tensions between investors and external managers and reasonably manage the risks to both parties by ensuring that external managers are not unreasonably entrenched and that, if agreements are extended, shareholders have a say in the matter.

Consultation Question 18

Do you have any comment on the proposed Chapter 18?

If you believe a rule could be improved, please identify the rule and outline why you believe it could be improved and what changes should be made.

If you do not support a rule or part of a rule, please identify the rule and outline why you do not support it and what changes should be made.

Chapter 19 – Meetings of Security Holders

Proxy forms

The Existing Rules require that a proxy form allows investors to vote for or against a resolution.

It is proposed to amend the rules relating to proxies to require that a proxy form allows investors to vote for or against a resolution or to abstain.

The Existing Rules are also silent as to whether a security holder may vote all or a part of their holding or vote all or a part of their holding in different ways. This is important for trustees and custodians who may be instructed by their clients to vote in different ways (for example, 48% for, 40% against and 12% abstain).

It is proposed to amend the rules to require that the proxy form allows a security holder to vote all or a part of their holding or vote all or a part of their holding in different ways.

Voting exclusion statement

The equivalent chapter of the Existing Rules contains both the wording of the voting exclusion statement and a table of excluded persons for each rule where a voting exclusion statement is required.

In an endeavor to make the Proposed Rules more usable, it is proposed that this chapter contain the wording of the voting exclusion statement but the details of excluded persons is set out throughout the rules in each relevant rule where a voting exclusion statement is required.

Consultation Question 19 Do you have any comment on the proposed Chapter 19?
If you believe a rule could be improved, please identify the rule and outline why you believe it could be improved and what changes should be made.
If you do not support a rule or part of a rule, please identify the rule and outline why you do not support it and what changes should be made.

Chapter 20 – Miscellaneous On-going requirements

Provision of complete and accurate information

Section 420(2) of the Companies Act states that every director or employee of an entity who makes or furnishes, or authorizes or permits the making or furnishing of, a statement or report to PNGX that relates to the affairs of the entity and that is false or misleading in a material particular, knowing it to be false or misleading, commits an offence.

Section 458 of the Capital Market Act states that a person who with intent to deceive, makes or furnishes knowingly authorises or permits the making or furnishing of any false or misleading statement to PNGX relating to the affairs of a listed entity is guilty of an offence.

The ability of PNGX to operate and monitor a fair and orderly market is reliant upon PNGX being provided with information which is complete, accurate and not misleading.

Whilst sections 420(2) of the Companies Act and 458 of the Capital Market Act allow the relevant regulator to take action to enforce the relevant obligations, absent a Listing Rule there is no explicit capability for PNGX to ensure information is complete, accurate and not misleading or to act in response to that not being the case.

It is proposed to introduce rules to require that listed entities provide information which is complete, accurate and not misleading.

PNGX acknowledges that errors occur or new information may become subsequently available to the listed entity which means that information previously provided to PNGX is no longer complete, accurate and not misleading. It is proposed to introduce a rule to address this circumstance.

Individuals responsible for communications with PNGX

It is proposed to introduce a rule requiring that each entity must appoint competent individuals responsible for communication with PNGX and tell PNGX of any change in those competent individuals

For many entities the company secretary will be an appropriate person to be responsible for liaison with PNGX, although this may not always be the case, taking into account the structure of the entity. PNGX expects that the person will have a high degree of familiarity with an entity's operations or have ready access to senior management who have responsibility for day to day management of the entity.

An entity may nominate more than one person to be responsible for communication with PNGX but at any time at least one of the persons nominated must be available to PNGX.

The nomination of such a person is for administrative convenience only and does not in any way abrogate the responsibility that lies on the listed entity under the Listing Rules.

The proposed rule is particularly important for listed entities incorporated and/or for which senior management is located outside PNG.

Consultation Question 20

Do you have any comment on the proposed Chapter 20?

If you believe a rule could be improved, please identify the rule and outline why you believe it could be improved and what changes should be made.

If you do not support a rule or part of a rule, please identify the rule and outline why you do not support it and what changes should be made.

Chapter 21 - Transfers and registration

T+2 settlement

The Existing Rules and the current PNGX market structure is based upon Trade Date plus 3 business days (T+3) settlement cycles.

Most markets have now moved to T+2 settlement cycles.

The Proposed Rules are drafted on the basis of moving to a T+2 settlement cycles.

Ideally, a move to T+2 would be undertaken in an environment of electronic settlement, transfer and registration. At this time, the PNG market is a hybrid of paper-based settlement, transfer and registration of securities and electronic settlement of cash. However, given the low volume of trading in PNG, it is easier to move to T+2 settlement now rather than when higher volumes are experienced. Whilst the manual processes in PNG may lead to some processing challenges, a faster settlement cycle will reduce counterparty risk in the market and assist with the generation of liquidity in the market.

Initial indications are that the 2 stockbrokers currently participating in the market could adjust to a T+2 settlement cycle.

A T+2 settlement cycle will also align corporate action timetables for dividends, rights issues, etc with ASX, reducing compliance costs for dual listed companies and removing market manipulation opportunities.

Consultation Question 21

Do you have any comment on the proposed Chapter 21?

If you believe a rule could be improved, please identify the rule and outline why you believe it could be improved and what changes should be made.

If you do not support a rule or part of a rule, please identify the rule and outline why you do not support it and what changes should be made.

Chapter 22 – Ongoing obligations of debt listings

Ongoing compliance with Listing Rules

By their nature, the rights, obligations and investment drivers of investors in corporate debt are different to those of investors in equity securities. For this reason, many listing rules are not applicable to issuers of corporate debt.

The chapter sets out which rules are applicable to issuers of corporate debt only (that is, the entity does not also have quoted equity securities). In practice, issuers of corporate debt would have their debt securities traded on the PNGX Debt Market unless the characteristics of the debt securities are such that they cannot be traded on that market and must be listed and quoted on the PNGX market.

Consultation Question 22

Do you have any comment on the proposed Chapter 22?

If you believe a rule could be improved, please identify the rule and outline why you believe it could be improved and what changes should be made.

If you do not support a rule or part of a rule, please identify the rule and outline why you do not support it and what changes should be made.

Chapter 23- Ongoing obligations of Exempt Listings

Ongoing compliance with Listing Rules

This Chapter sets out the ongoing obligations of Exempt Issuers.

Exempt Issuers must comply with the Listing Rules of their primary market, usually their home jurisdiction, and with a minimal number of the PNGX Listing Rules.

Unless stated otherwise, an Exempt Issuer is not required to comply with any other Rule than those set out in this chapter unless PNGX notifies the issuer that it must comply with any other Rule.

Consultation Question 23

Do you have any comment on the proposed Chapter 23?

If you believe a rule could be improved, please identify the rule and outline why you believe it could be improved and what changes should be made.

If you do not support a rule or part of a rule, please identify the rule and outline why you do not support it and what changes should be made.

Chapter 24 – Requirements for documents

This chapter set out the requirements for giving documents to PNGX in draft, for release to the market or not for release to the market. It also sets out the obligations of listed entities to ensure information is disclosed to the market before providing that information to any other person.

Language of documents

It is proposed to introduce a requirement that a document given to PNGX, whether for public release or otherwise, must be in English or accompanied by an English translation.

Method of lodgement of documents

It is proposed to introduce more detailed requirements for the lodgement of documents with PNGX.

PNGX prefers electronic lodgement to hard-copy lodgement of documents.

Consultation Question 24

Do you have any comment on the proposed Chapter 24?

If you believe a rule could be improved, please identify the rule and outline why you believe it could be improved and what changes should be made.

If you do not support a rule or part of a rule, please identify the rule and outline why you do not support it and what changes should be made.

Chapter 25 - Fees

Use of a bonds required by Rule 1.9

The chapter sets out how the bond referred to in chapter 1 is to be managed by PNGX.

The bond will be held in trust for the benefit of the issuer. Interest earned on the trust funds will be paid to either the PNGX Compensation Fund (operated by PNGX for investor protection pursuant to Part IX of the Capital Market Act) or to the Capital Market Development Fund (operated by the Securities Commission pursuant to Part XIV of the Capital Market Act) for investor education.

Consultation Question 25

Do you have any comment on the proposed Chapter 25?

If you believe a rule could be improved, please identify the rule and outline why you believe it could be improved and what changes should be made.

If you do not support a rule or part of a rule, please identify the rule and outline why you do not support it and what changes should be made.

Chapter 26 – Trading halts, suspensions, removal

Suspension for failure to pay annual fees

The Existing Rules set out that if PNGX does not receive payment of an entity's annual listing fees within 15 business days after the due date, PNGX will suspend quotation of the entity's securities on the next business day. PNGX will not waive this rule.

PNGX acknowledges that suspension has an adverse impact upon security holders by denying them a market. Suspension for failure to pay fees by the due date is quite different to suspension for failure to lodge documents for disclosure to the market by the due date, the latter being a failure which results in an uninformed market.

However, PNGX is of the view that an entity which cannot pay fees for listing by the due date may not comply with its obligations under the listing rules to have a financial condition which is adequate to warrant the continued quotation of its securities and its continued listing. PNGX is of the view that the market should be put on notice that the entity has failed to pay fees, and to delay the suspension date until one month after the due date, which will generally be approximately 60 days after the invoice date, being closer to normal commercial terms.

It is proposed to amend the rules to provide that if PNGX does not receive payment of an entity's annual fees within 15 business days after the due date, PNGX will commence the actions prescribed in the Procedures on the next business day.

The Procedures will specify that PNGX will take the following actions for failure to pay annual listing fees. These actions are additional to the charging of any interest for late payment as set out in the Schedule of Fees.

Date	Action
1 business day after due date	Market release advising that the entity has failed to pay annual listing fees and will be accruing interest
15 business days after due date	Market release advising that the entity has failed to pay annual listing fees and will be accruing interest
1 month after due date	Market release advising that the entity has failed to pay annual listing fees and will be accruing interest Suspension from Official Quotation
2 months after due date	Market release advising that the entity has failed to pay annual listing fees and will be accruing interest
3 months after due date	Market release advising that the entity has failed to pay annual listing fees and will be accruing interest
4 months after due date	Market release advising that the entity has failed to pay annual listing fees and will be accruing interest
5 months after due date	Market release advising that the entity has failed to pay annual listing fees and will be accruing interest
6 months after due date	Market release advising that the entity has failed to pay annual listing fees and will be accruing interest Removal from the Official List

Transfer to another PNGX market

As referred to in the Introduction to this consultation paper, to date PNGX has operated a single equities market. Having regard to the nature of the PNG capital market, PNGX will be developing specialist markets for differing sectors of the capital market in order to better facilitate access to capital for issuers with different levels of maturity and for different financial products and services.

The proposed market offerings which have or are being developed are as follows:

Current	Proposed	Status
PNGX equities market	BikMaket Main Market	Renamed current equities market
	DinauMaket Debt Market	New corporate debt market
	PasisMaket Passage Market	Proposed equities “passage” market for medium sized issuers
	GroMaket Growth Market	Proposed platform for small and medium sized issuers to access funding and social fund raising

It is proposed that PNGX have the capacity to transfer an issuer to another market in the following circumstances:

- The issuer requests it. PNGX is not required to act on the issuer’s request;
- The issuer is unable or unwilling to comply with, or breaks, a Listing Rule;
- The *securities no longer meet the requirements necessary for *quotation;
- If PNGX does not receive payment of an issuer’s annual fees within 90 *business days after the due date;
- The *securities have been suspended for a period longer than specified in the Procedures; or
- It is appropriate for some other reason.

PNGX has the capacity to remove an issuer from quotation in these circumstances. However, this permanently denies shareholders a market for their securities. Depending upon the circumstances, transfer to another market may provide a preferable alternative to the absolute removal of the issuer from quotation. It could, in effect, act as an opportunity for the issuer to remedy the causes of the circumstances which led to the transfer whilst still giving shareholders limited access to a market. In due course, the issuer may return to the BikMaket (Main Market).

Removal from quotation not at the entity’s request

It is proposed to expand the circumstances in which an issuer’s securities may be removed from quotation at the direction of PNGX.

The additional circumstances are:

- It is necessary to prevent a disorderly or uninformed market;
- PNGX is directed by SECOM pursuant to section 21 of the Capital Market Act;
- PNGX’s Listing Rules or Business Rules require removal from the official list;
- Automatic removal after a long suspension, as prescribed in the Procedures; or
- Removal for failure to pay annual listing fees as prescribed in the Procedures.

The Procedures will set out that a long suspension means a period of 24 months continuous suspension.

Consultation Question 26

Do you have any comment on the proposed Chapter 26?

If you believe a rule could be improved, please identify the rule and outline why you believe it could be improved and what changes should be made.

If you do not support a rule or part of a rule, please identify the rule and outline why you do not support it and what changes should be made.

Chapter 27 – Application of the rules

Waivers

At present, PNGX does not publish details of waivers granted to listed entities.

In the interests of transparency and equity, it is proposed that PNGX will publish waivers periodically.

It is proposed that details of waivers granted will be published on the PNGX website monthly in the form of a waivers register. The waivers register will include the name of the entity which received the waiver, the terms and conditions of the waiver and brief reasons why it was granted. If no waivers are granted, the monthly report will state that.

If the timing of public disclosure of a waiver is cause for concern (for example, for reasons of commercial sensitivity), the waiver will not be published until such time as it is no longer commercially sensitive to the issuer.

For privacy reasons, the names of individuals who are involved in or affected by a waiver will not generally be published in the waivers register, unless the information is in the public domain. References to such individuals will usually be replaced by generic or anonymous references (eg Person 1, Person 2, etc).

Giving PNGX information to demonstrate compliance

The Existing Rules provide that PNGX may seek additional information from the issuer, or any other person, in relation to an application for admission. PNGX may submit, or require the issuer to submit, any information given to PNGX to the scrutiny of an expert selected with the approval of PNGX. The issuer must pay for the expert.

It is proposed to extend this to both an application for admission and on an ongoing basis. This may be of particular relevance in the case of geological reports.

Release of correspondence between PNGX and entity

The Existing Rules state in a note to Rule 15.6 that PNGX will normally only release information in a document that is given to it and marked not for public release after PNGX has told the entity that it will do so.

Release of correspondence with an entity is a valuable tool for PNGX to promote an orderly and transparent market. It can put context to an announcement by a listed entity or it can serve as a form of sanction if an entity does not respond to PNGX enquiries in an appropriate or timely manner.

It is proposed to move the note to a rule and to PNGX may publish correspondence between it and an entity if PNGX has reserved the right to do so and considers that it is appropriate for an informed market.

Limitation of liability of PNGX and indemnities

The Listing Rules serve as a contract between PNGX and a listed entity.

Neither the Existing Rules or the Appendices to the rules contain standard provisions relating to limitation of liability and indemnities.

It is proposed to adopt Rules relating to limitation of liability and indemnities

Exercise of PNGX powers

The Existing Rules do not contain standard provisions relating to how PNGX exercises its powers under the rules.

It is proposed to adopt Rules relating to how PNGX exercises its powers under the rules. These include provisions that PNGX may record telephone conversations to or by PNGX for internal training, quality control and market integrity purposes.

Consultation Question 27

Do you have any comment on the proposed Chapter 27?

If you believe a rule could be improved, please identify the rule and outline why you believe it could be improved and what changes should be made.

If you do not support a rule or part of a rule, please identify the rule and outline why you do not support it and what changes should be made.

Chapter 28 – Transitional provisions

Transitional Provisions

As the Proposed Rules are a substantial rewrite of the Existing Rules, it is proposed to adopt transitional provisions protecting PNGX and listed entities in relation to all prior decisions and actions.

Consultation Question 28 Do you have any comment on the proposed Chapter 28?
If you believe a rule could be improved, please identify the rule and outline why you believe it could be improved and what changes should be made.
If you do not support a rule or part of a rule, please identify the rule and outline why you do not support it and what changes should be made.

Definitions and Interpretation

The Definitions and Interpretations section of the Proposed Rule is given a different numbering schema to give PNGX flexibility to add additional chapters to the rules as required, without creating administrative and related issues associated with continuation of the numbering schema for the body of the rules themselves.

Interpretation

Governing law and Submission to jurisdiction

The Listing Rules serve as a contract between PNGX and a listed entity.

Neither the Existing Rules or the Appendices to the rules contain standard provisions relating to governing laws and jurisdiction.

It is proposed to adopt Rules relating to governing laws and jurisdiction

Conduct

The Existing Rules do not contain rules relating to the conduct of listed entities.

It is proposed to adopt rules to the effect that:

- a) An act or omission by an entity includes an act or omission caused directly or indirectly by the entity;
- b) Conduct engaged in on behalf of an entity by an officer, employee, or other agent of the entity is taken for the purposes of the Listing Rules to have been engaged in by the entity, whether or not the conduct is within the scope of the actual or apparent authority of the officer, employee, or other agent; and
- c) Conduct engaged in on behalf of an entity by any other person at the direction or with the express or implied consent of an officer, employee, or other agent of the entity is taken for the purposes of the Listing Rules to have been engaged in by the entity, whether or not the giving of the direction or consent is within the scope of the actual or apparent authority of the officer, employee or other agent.

Appendices, history, notes and procedures

Section 11 of the Capital Market Act requires that an amendment to the rules of a stock exchange shall not have effect until it has been approved by SECOM under subsection 11(5).

Materials which are not part of the Listing Rules are not subject to SECOM approval pursuant to section 11 of the Capital Market Act.

Consistent with the structure of rules in other markets, it is proposed that there be a differentiation between the Rules, the Appendices and the Procedures.

The Existing Rules state that the following are not part of the listing rules.

- a) The Tables of Contents;
- b) The Explanatory notes;
- c) The Introduction (except the principles on which the listing rules are based);
- d) The history, notes, examples and cross references set out beneath particular rules; and
- e) The Index.

In adopting a new structure to the Rules it is proposed that the Appendices will be part of the Rules and the Procedures will not be part of the Rules. Accordingly, any amendment to the Appendices will require approval by

SECOM under subsection 11(5). However, any amendment to the Procedures will not require approval by SECOM under subsection 11(5).

This structure allows SECOM to retain authority over substantive matters in the Appendices whilst providing PNGX with flexibility to respond quickly to market circumstances in relation to less substantive and procedural matters. However, in order to manage changes to the Procedures without causing disruption to the market, it is proposed PNGX will notify listed entities of any amendment before the amendment takes effect.

In addition, whilst the Procedures are not considered part of the Rules of the purposes of Chapter 11 of the Capital market Act, they must remain enforceable by PNGX. It is proposed that the Rules state that if a Listing Rule requires compliance with a Procedure, then failure to comply with the Procedure is a breach of that Rule.

References codes and standards, etc are not part of the Listing Rules

The Existing Rules and the Proposed Rules reference a number of external standards and codes. Whilst these standards and codes are enforceable under the Rules, they are not fully within the jurisdiction of PNGX or SECOM. Hence, for clarity, it is proposed to make it clear that those standards and codes are not part of the Proposed Rules although if a Listing Rule requires compliance with a referenced code or standard, then failure to comply with the referenced code or standard is a breach of that Rule.

Also for clarity, it is proposed that to the extent of any inconsistency between the Listing Rules and a referenced code or standard, the referenced code or standard will prevail.

Application to managed investment schemes

The body of the listing rules do not differentiate between corporate entities and managed investment schemes notwithstanding that the governance structures are quite different. At present there are no listed managed investment schemes on PNGX.

Rather than include reference to managed investment schemes throughout the body of the rules unless otherwise required, in the interests of readability and ease of use, it is proposed that the Interpretations section establish way in which the rules are to be applied to managed investment schemes.

Consultation Question 29

Do you have any comment on the proposed Definitions and Interpretations section?

If you believe a rule could be improved, please identify the rule and outline why you believe it could be improved and what changes should be made.

If you do not support a rule or part of a rule, please identify the rule and outline why you do not support it and what changes should be made.

Other feedback

The consultation paper sets out PNGX's proposals in relation to the BikMaket (Main Market) Listing Rules.

We would value any other feedback on how the market may be improved. This includes, but is not limited to:

1. Other matters which should be included in the Listing Rules;
2. What the structure and requirements of a PasisMaket might include. Examples of issues to consider might include SMEs, co-operatives, variable voting rights to allow founders to have more control, corporate governance issues, processes for raising new capital, trading hours being reduced to concentrate market liquidity, etc);
3. How might market liquidity be improved;
4. What Government policies might be adopted to assist with expansion of the market. These might be:
 - a. policies to assist bringing new products to the market (for example, Real Estate Investment Trusts (REITs), other forms of managed investment funds, co-operatives, community banks, etc);
 - b. Incentives to encourage foreign companies listed on another market on the region and with significant activities in PNG to dual-list in PNG.
 - c. Taxation incentives. Examples of incentive policies in other emerging markets include:
 - i. In Fiji¹ there are the following concessions:
 1. Entities that list on SPX enjoy a reduced corporate tax rate of 10%. This tax rate reduces an entity's corporate tax liability by up to 50%, allowing more funds to be reinvested into the business or paid out to shareholders as dividends;
 2. Income including any gain from sale of shares that may arise from reorganisation, reconstruction, or amalgamation of a private company for the purposes of listing or as part of a listing process on SPX, prior to listing, or after listing will be exempt from any taxes. The private company must be listed with the SPX within 24 months from the date of commencement of reorganisation, reconstruction or amalgamation.
 3. Advisory costs being incurred in the process of listing will be 150% tax deductible. These include investment advisory fees, legal and accounting fees, underwriting fees and other costs related to listing (e.g. printing);
 4. Dividends received by a shareholder from a listed company will be tax free.
 5. There is no capital gains tax applicable on gains derived from disposal of shares in SPX listed entities. Income tax is also not applicable on gains derived by resident shareholders from trading of shares.
 - ii. In Jamaica², a company listed on the Junior Market (similar to the proposed PasisMaket) receives tax concessions of:
 1. 100% for the first 5 years; and
 2. 50% for the subsequent 5 yearsallowing more funds to be reinvested into the business or paid out to shareholders as dividends thereby promoting company growth and access to capital.
 - iii. In Trinidad & Tobago³, a listed SME (similar to the proposed PasisMaket) receives tax concessions of:
 1. 100% for the first 5 years; and
 2. 85% for the subsequent 5 yearsallowing more funds to be reinvested into the business or paid out to shareholders as dividends thereby promoting company growth and access to capital.
 - iv. In Thailand⁴

¹ <https://www.spx.com.fj/Listing/Listing-Incentives>

² <https://www.jamstockex.com/wp-content/uploads/2015/03/Junior-Market-Income-Tax-Amendment-Act-2016-No.-21.pdf>

³ <https://cdn.stockex.co.tt/wp-content/uploads/2021/01/Finance-Act-2020.pdf>

⁴ <https://milkeninstitute.org/sites/default/files/reports-pdf/080417-Promoting-Participation-in-SME-Boards-through-Tax-Incentives.pdf>

1. A company listed on the main board received tax concessions of 16.7% for the first 5 years; and
 2. An SME listed on the Mai board (similar to the proposed PasisMaket) received tax concessions of 33% for the 5 years
- resulting in a 2,000% increase in the number of listed SMEs and a 576% in market capitalisation.

Consultation Question 30

Do you have any feedback on how the market may be improved?
Please provide as much detail as you can on your proposal and how you believe it could improve the market.