



Title

Nightingale Intelligent Systems, Inc. ("Nightingale" or "NGL") - ASX Settlement Operating Rule 5.18.2 inclusion of CHESS Depositary Interests of Nightingale Intelligent Systems, Inc. as "FOR" Financial Products

Description

This Notice contains important information about the eligibility to participate in the Nightingale Intelligent Systems, Inc. Initial Public Offer ("Offer") of new Nightingale CDI's over shares of its common stock and 1 free attaching Option (to be represented as a CDI) for every 2 new CDIs subscribed for over shares of its common stock, and should be read carefully by Participants.

Notice Content

The following class of Financial Products has been included in Schedule 1 of the ASX Settlement Operating Rules as FOR Financial Products effective **18 November 2022**

<i>Issuer</i>	<i>Financial Product</i>	<i>ASX Code</i>
Nightingale Intelligent Systems, Inc.	CHESS Depositary Interests 1:1 – U.S. Person Prohibited Excluding QIB	NGL
	CHESS Depositary Interest 1:1 Options – U.S. Person Prohibited Excluding QIB	NGLO

What do I need to do and by when?

The CHESS Depositary Interests of NGL (**NGL's Financial Products**), which are scheduled to commence trading under ASX code NGL and NGLO on **18 November 2022**, are not permitted to be acquired at any time by, or for the account of or benefit of, any U.S. Person who is not a Qualified Institutional Buyer (**Excluded U.S. Investor**) (annexed to this Notice is an excerpt of the definition of U.S. Person, Qualified Institutional Buyer and Excluded U.S. Investor). Any Excluded U.S. Investor will not be entitled to acquire any of NGL's Financial Products during the applicable distribution compliance period except:

- (a) in accordance with the provisions of Regulation S under the U.S. Securities Act of 1933, as amended (**U.S. Securities Act**);
- (b) pursuant to Rule 144A under the U.S. Securities Act;
- (c) pursuant to an effective registration statement under the U.S. Securities Act; or
- (d) pursuant to any other available exemption from the registration requirements of the U.S. Securities Act,

and in each case in accordance with all applicable U.S. state securities laws.

In order to ensure that foreign ownership restrictions can be monitored and that NGL's Financial Products are not acquired by, or for the account of, or benefit of any Excluded U.S. Investor, ASX Settlement has agreed:

- (a) to classify NGL's Financial Products as FOR Financial Products under the ASX Settlement Operating Rules and to include NGL's Financial Products in Schedule 1 of the ASX Settlement Operating Rules Procedures; and

- (b) to implement certain additional procedures as contemplated in Guidance Note 7 of the ASX Listing Rules (*US Entities – Regulation S Offerings on ASX*) and Guidance Note 13 of the ASX Settlement Operating Rules (*Financial Products subject to Foreign Ownership Restrictions*) in relation to NGL's Financial Products.

The following conditions apply to NGL's Financial Products:

Foreign Person

A "Foreign Person" is an "Excluded U.S. Investor" as that term is defined in the attachment to this Bulletin.

Level of Foreign Ownership

The relevant Foreign Person ownership level is **zero**.

This means that no Excluded U.S. Investor, as that term is defined, may acquire NGL's Financial Products.

NGL, as Issuer of the Financial Products, has agreed to be bound by the additional obligations of an Issuer of FOR Financial Products under Rule 5.18 of the ASX Settlement Operating Rules.

NGL's Financial Products are being offered and will be traded on the ASX market in reliance on the safe harbour provisions of Regulation S under the U.S. Securities Act and pursuant to Rule 144A under the U.S. Securities Act. In addition, NGL's Financial Products are being offered and will be traded in compliance with the procedures set out in the no-action letter dated 7 January 2000 given to ASX by the United States Securities and Exchange Commission in respect of offerings on the ASX market, other than in relation to procedures that allow U.S. Persons that are Qualified Institutional Buyers to purchase CDIs in secondary market transactions on ASX. Certain of these procedures can be satisfied by the application of the status of FOR Financial Products to NGL's Financial Products under the ASX Settlement Operating Rules. The status of FOR Financial Products under the ASX Settlement Operating Rules will be applied to NGL's Financial Products.

Where the holder is currently designated as "F", and wishes to hold NGL's Financial Products, but is not an Excluded U.S. Investor, a new holder record should be established for that holder designated as "D" for the purposes of holding NGL's Financial Products.

Where a holder is currently designated as "F" or "M", and is an Excluded U.S. Investor, that person cannot acquire and hold any of NGL's Financial Products.

Participants should liaise with clients intending to purchase or hold NGL's Financial Products and make all necessary enquiries to ensure that those clients are not Excluded U.S. Investors, and that those clients who are Excluded U.S. Investors are made aware that they cannot acquire any of NGL's Financial Products. Failure to do so may result in client loss. Similarly, Participants may be liable for any failure to establish a new Holder Record designated as "D" or effect a change of residency indicator where it is necessary.

Foreign and Mixed Holdings

NGL's Financial Products cannot be acquired by an Excluded U.S. Investor in holdings designated as "F" or "M" under any circumstances, as they may be subject to divestment action by Nightingale as set out under the ASX Settlement Operating Rules.

Divestment Periods and Procedure

If the Foreign Ownership Percentage Level is breached, that is, if any Excluded U.S. Investor designated as "F" or "M" is registered as holding NGL's Financial Products, NGL reserves the right, to the maximum extent permitted by law, to take divestment or forfeiture action in respect of those Financial Products.

Definitions of "Excluded U.S. Investor", "Qualified Institutional Buyer", "U.S. Person", "U.S. Securities Act" and "United States"

An **“Excluded U.S. Investor”** means a holder of NGL's Financial Products (or a person who seeks to be entered on the register as a holder of NGL's Financial Products) who is a U.S. Person that is not a Qualified Institutional Buyer or holds or will hold NGL's Financial Products for the account or benefit of any U.S. Person who is not a Qualified Institutional Buyer.

A **“Qualified Institutional Buyer”** has the meaning given in Rule 144A under the U.S. Securities Act.

A **“U.S. Person”** has the meaning given in Rule 902(k) of Regulation S under the U.S. Securities Act.

As at the date of this Notice:

1. **“U.S. Person”** means:

- any natural person resident in the United States;
- any partnership or corporation organized or incorporated under the laws of the United States;
- any estate of which any executor or administrator is a U.S. Person;
- any trust of which any trustee is a U.S. Person;
- any agency or branch of a foreign entity located in the United States;
- any non-discretionary account or similar account (other than an estate or trust) held by a dealer or other fiduciary for the benefit or account of a U.S. Person;
- any discretionary account or similar account (other than an estate or trust) held by a dealer or other fiduciary organized, incorporated, or (if an individual) resident in the United States; and
- any partnership or corporation if:
 - organised or incorporated under the laws of any foreign jurisdiction, and
 - formed by a U.S. Person principally for the purpose of investing in securities not registered under the U.S. Securities Act, unless it is organised or incorporated, and owned by accredited investors (as defined in the U.S. Securities Act) who are not natural persons, estates or trusts.

2. The following are not **“U.S. Persons”**:

- any discretionary account or similar account (other than an estate or trust) held for the benefit or account of a non-U.S. Person by a dealer or other professional fiduciary organized, incorporated, or (if an individual) resident in the United States;
- any estate of which any professional fiduciary acting as executor or administrator is a U.S. Person if:
 - an executor or administrator of the estate who is not a U.S. Person has sole or shared investment discretion with respect to the assets of the estate; and
 - the estate is governed by foreign law;
- any trust of which any professional fiduciary acting as trustee is a U.S. Person, if a trustee who is not a U.S. Person has sole or shared investment discretion with respect to the trust assets, and no beneficiary of the trust (and no settlor if the trust is revocable) is a U.S. Person;

- an employee benefit plan established and administered in accordance with the law of a country other than the United States and customary practices and documentation of such country;
- any agency or branch of a U.S. Person located outside the United States if:
 - the agency or branch operates for valid business reasons; and
 - the agency or branch is engaged in the business of insurance or banking and is subject to substantive insurance or banking regulation, respectively, in the jurisdiction where located; and
- the International Monetary Fund, the International Bank for Reconstruction and Development, the Inter-American Development Bank, the Asian Development Bank, the African Development Bank, the United Nations, and their agencies, affiliates and pension plans, and any other similar international organizations, their agencies, affiliates and pension plans.

"U.S. Securities Act" means the U.S. Securities Act of 1933, as amended.

"United States" means the United States of America, its territories and possessions, any State of the United States and the district of Columbia.

Need more information?

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