

Newcastle

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18 September 2015

Ms Violetta Codreanu
Adviser, Listings Compliance (Sydney)
ASX Compliance Pty Limited
20 Bridge Street
Sydney NSW 2000

By email: Violetta.Codreanu@asx.com.au

NSX Limited (the “Company”) – accounting query

In response to your letter dated 11 September 2015 NSX provides the following information to your six questions:

Question 1

The Directors confirm the Declaration contained on page 96 of the Annual Report for the year ended 30th June 2015 that the financial statements and notes, as set out in the Statement of Comprehensive Income Statement, Statement of Financial Position, Statement of changes in equity, Statement of Cash Flow and notes to the financial statements are in accordance with the *Corporation Act* 2001 and:

- (a) complies with the *Australian Accounting Standards* and the *Corporations Act and Regulations* 2001 (section 296); and
- (b) gives a true and fair view of the financial position of the Company as at 30 June 2015.

Question 2

The Financial Assets held by the Company and disclosed in Note 9 of the Annual Report, are certainly available for use by the company.

These items are all cash on deposit, are monies controlled by the Company, over which no other person, entity or regulatory body has a claim.

AASB 107 Statement of Cash Flows paragraph 48 requires “An entity shall disclose, together with a commentary by management, the amount of significant cash and cash equivalent balances held by the entity that are not available for use by the group.” Paragraph 49 goes on to describe the circumstances where it would be considered that the cash was not available for use by the group. The two examples provided there are:

- (a) Where a subsidiary that operates in a country where exchange controls prohibit the general use of the cash by the parent or other subsidiary entities; or
- (b) Where there are other legal restrictions that apply to the cash which restrict the use of the cash.

With respect to items C. (a) and (b), it is important to note the following distinction. These balances do not form part of the Compensation Arrangements of the Australian Market Licenses held by the Company. They are cash of the Company, invested by the Company, in term deposits. These deposits are the collateral nominated by the Company for two Irrevocable Letters of Credit (“ILC”). The ILCs, do form

part of the Compensation Arrangements however, the collateral (which currently takes the form of the term deposits), can be substituted at any time. This means that the assets, i.e. the term deposits, are not legally restricted in any way and are available for general use by the Company at any time. [Reference AASB 107 Statement of Cash Flows paragraph 49.] This information is disclosed in Note 21 of the Annual Report.

Equally, the item identified in C. (c) is cash of the Company invested in a term deposit. This term deposit is used as support for a bank guarantee, which fulfils the collateral requirements of the ASX for settlement participants. The cash invested in the term deposit remains at all times, an asset of the Company, and could be substituted, or the arrangements unwound if the Company were to decide to no longer be registered as a settlement participant with ASX. This cash on deposit is therefore not legally restricted in any way and is available for general use by the Company. [Reference AASB 107 Statement of Cash Flows paragraph 49.] Note 21 of the Annual Report refers to this arrangement. The Company notes that this disclosure is consistent with the other ASX Settlement Participants who have the same collateral requirements.

Item C. (d) is not considered a material cash balance.

Question 3

AASB.66 states that “An entity shall classify an asset as current when:

- (a) it expects to realise the asset, or intends to sell or consume it, in its normal operating cycle;
- (b) it holds the asset primarily for the purpose of trading;
- (c) it expects to realise the asset within twelve months after the reporting period; or
- (d) the asset is cash or a cash equivalent (as defined in AASB 107) unless the asset is restricted from being exchanged or used to settle a liability for at least twelve months after the reporting period.**

An entity shall classify all other assets as non-current.”

Analysis against the requirements of AASB 101.66(d)

NSX has correctly classified the asset as a current asset because the balance satisfies the requirements of AASB 101.66, including sub-paragraph (d).

More specifically, in order to fail sub-paragraph (d), and consequently default to a classification of the asset as a non-current asset, the relevant asset must be restricted from being exchanged or used to settle a **liability** for at least **twelve months** after the reporting period. In fact there is no liability supported and it is simply not the case that any of these assets have restrictions that apply for 12 months from any date rather they are "at call" restrictions.

Sub-paragraph (d) can be divided into three elements or tests as follows:

- (a) the asset must be **restricted (“Test 1”)**; and
- (b) from being exchanged or used for settlement of a **liability (“Test 2”)**; and
- (c) for at **least twelve months** after the reporting period (**“Test 3”**).

NSX will address the requirement of Test 2 first, as it is the most unequivocal.

Test 1: The asset must be restricted

The asset may be used for any purpose determined by the Board of NSX. Presently it is being used to support the Irrevocable Letter of Credit provided as a component of the NSX and SIM VSE Compensation Arrangements. However, if the Board of NSX so chose, it could at short notice, spend or invest part or all of the cash and replace the asset with another suitable form of security for the Irrevocable Letter of Credit. Therefore, NSX is not limited, constrained or restricted in how it may use this asset. Test 1: That the asset must be restricted, is not satisfied.

Test 2: Be exchanged or used for settlement of a liability

AASB 101.66(d) requires the identification of a liability. As at reporting date, **there is no liability on the balance sheet** of NSX relating to this asset.

Therefore it is not possible that Test 2 is satisfied. Test 2 fails and consequently, the exception in AASB 101.66(d) is not met. The balance should be classified as a current asset.

Test 3: For settlement at least twelve months after the reporting period

There is no lock in period in relation to any of the arrangements, accordingly currently there is no restrictions that apply for 12 months from any date rather they are "at call" restrictions.

In the unlikely event that a liability under the Compensation Arrangements crystallises the liability must be settled within nine months of the event of loss occurring.

This is because the claimant must make a claim no more than six months after the event that caused lossⁱⁱ, and NSX must process the claim within two monthsⁱⁱⁱ, and must pay out the claim within one month of its determination^{iv}. As a consequence, the maximum amount of time from when a loss is incurred to when NSX must payout the claim is nine months.

It is therefore impossible for a liability incurred under the Compensation Arrangements to be for settlement for at least twelve months after the reporting date even if a liability is in fact incurred (which is currently not the case). As a consequence the third test contained in AASB101.66(d) fails.

NSX also notes that a claim on the Compensation Arrangements does not automatically create a liability of NSX that will be extinguished using the Irrevocable Letter of Credit. For example, the claim may be settled using the cash held and available in the Fidelity Fund. As reported in the Annual report the NSX Fidelity Fund arrangements are off balance but noted on page 91 Note 24 with a balance of \$588,331. The NSX Business Rules do not apply a requirement as to the order of which a source of funds is used to pay the claim. This therefore eliminates the ASX assumed nexus between this asset and the settlement of a liability.

Positive satisfaction of the recognition requirements of AASB 101.66(a) – (d)

NSX can also demonstrate that the assets highlighted by ASX, specifically Term Deposits, satisfy the positive recognition test under AASB 101.66. It is noted that **only one** of the four tests need be met in order to satisfy the requirement.

AASB 101.66 An entity shall classify an asset as current when:

*(a) it expects to **realise the asset**, or intends to sell or consume it, in its normal operating cycle;*

As at reporting date, the term deposits were invested on a quarterly basis as part of the normal operating cycle of NSX. This therefore meant that the asset was realised (interest paid) in the normal operating cycle of NSX post balance date, thereby satisfying this test.

(b) it holds the asset primarily for the purpose of trading;

Not applicable to this balance.

*(c) it expects to realise the asset **within twelve months after the reporting period**; or*

The Term Deposits are realised on monthly basis and rolled over into new term deposits thereby satisfying this test.

*(d) the asset is **cash or a cash equivalent** (as defined in AASB 107)*

AASB 107.7 states that for an "investment to qualify as a cash equivalent it must be readily convertible to a known amount of cash and be subject to an insignificant risk of changes in value. Therefore, an investment normally qualifies as a cash equivalent only when it has a short maturity of, say, three months or less from the date of acquisition."

The Term Deposits are an amount of cash invested for a short period of time, for a known, fixed interest rate return. The deposit can be converted into cash at any time during the investment period, otherwise it will be converted to cash at the end of the investment period.

The asset is therefore an investment with a term of three months or less, which is readily convertible into cash, with a known realisable value and zero volatility risk.

The definition of cash or cash equivalent is met, and the positive arm of test (d) is satisfied.

Industry Specific Comparisons

A review of other Compensation Arrangements shows that NSX's disclosure is consistent with market practice for Fidelity Funds, i.e. the cash assets held as current assets.

- (a) ASX SEGC National Guarantee Fund
- (b) APX Fidelity Fund
- (c) NSX Fidelity Fund
- (d) SIM VSE Fidelity Fund

Conclusion

The asset highlighted by ASX, cannot possibly satisfy any of the three let alone all three elements of AASB 101.66(d) which are required to conclude that the asset should be classified as a non-current asset.

As the asset satisfies AASB 101.66 (as well as AASB 107), it is therefore rightly classified as a current asset.

Question 4

In the light of the answers provided to Questions 1, 2 and 3 above the Company is of the opinion that it has sufficient financial condition to warrant the continued quotation of its securities as per ASX Listing Rule 12.2. The basis of this opinion is that:

- (a) The directors believe that the Annual Report complies with *Australian Accounting Standards*, and gives a true and fair view of the financial performance and financial position of the Company;
- (b) The assets reported in Note 9, Financial Assets, are available for use by the Company in accordance with the requirements of AASB 107 Statement of Cash Flows paragraph 48 and the guidance provided in paragraph 49; and
- (c) The Financial Assets reported in Note 9 have been appropriately classified as a current asset, in compliance with the requirements of AASB 101 Presentation of Financial Statements paragraph 66, because it can be proven that these balances satisfy at least one of the tests described. In fact, the Company can demonstrate that these balances satisfy three of the four tests outlined in the Standard.

Question 5

In light of the answer provided in Question 4, that is the information presented in the Annual Report is consistent with the requirements of the *Australian Accounting Standards* and the *Corporations Act*, the Company does not consider it necessary to take any steps in response.

The Company will however, continue to look at new sources of capital. It is proposed at the Annual General Meeting contemplated for the 22 October 2015, that the Company extend its capacity to make a placement up to 25% of the issued capital to accommodate such opportunities. Such authorisation from shareholders is currently in place.

Question 6

The Directors confirm that that the Company is in compliance with the Listing Rules and in particular Listing Rule 3.1.

Scott Evans
General Manager & Company Secretary

ⁱ Chapter 7, Part 7.5, Section 885H of the *Corporations Act* of Australia 2001 states that the source of funds for Compensation Arrangements do not have to consist of a single source. It may be a combination of the following: Fidelity Fund (s.885H(a)), Insurance Arrangements (s885H(b)) or Irrevocable Letter of Credit *s.885H(c)).

ⁱⁱ NSX Business Rules Part F 4A.9

ⁱⁱⁱ NSX Business Rules Part F 4A.13

^{iv} NSX Business Rules Part F 4A.21



11 September 2015

Mr Scott Evans
General Manager & Company Secretary
NSX Limited
Level 2, 117 Scott Street
Newcastle NSW 2300

By email: scott.evans@nsxa.com.au

Dear Mr Evans,

NSX Limited (the "Company")

ASX Limited ("ASX") refers to the following.

- A. The Company's Annual Report to shareholders for the year ended 30 June 2015, lodged with ASX on 28 August 2015 ("Annual Report").
- B. The financial assets of \$2,228,000 disclosed in the Statement of Financial Position in the Annual Report as a current asset ("Financial Assets").
- C. Note 9 to the financial statements ("Note 9"), which names the Financial Assets as term deposits and details their composition as follows:
 - (a) \$700,000 is a cash deposit to support the NSXA compensation arrangements;
 - (b) \$1,000,000 is a cash deposit to support the SIM VSE compensation arrangements;
 - (c) \$500,000 is a cash deposit to support the ASX Settlement performance bond; and
 - (d) \$28,000 is a cash deposit to support rental bonds and credit card facilities.
- D. Australian Accounting Standards Board 107 *Statement of Cash Flows* paragraph 48, which states:

"An entity shall disclose, together with a commentary by management, the amount of significant cash and cash equivalent balances held by the entity that are not available for use by the group."
- E. Australian Accounting Standards Board 101 *Presentation of Financial Statements* paragraph 66, which states:

"An entity shall classify an asset as current when:

 - (a) it expects to realise the asset, or intends to sell or consume it, in its normal operating cycle;*
 - (b) it holds the asset primarily for the purpose of trading;*
 - (c) it expects to realise the asset within twelve months after the reporting date; or*
 - (d) the asset is cash or a cash equivalent (as defined in AASB 107) unless the asset is restricted from being exchanged or used to settle a liability for at least twelve months after the reporting period.*

An entity shall classify all other assets as non-current."



- F. Listing Rule 12.2, which provides that an entity's financial condition (including operating results) must, in ASX's opinion, be adequate to warrant the continued quotation of its securities and its continued listing.
- G. Listing Rule 19.11A(b), which provides that if a listing rule requires an entity to give ASX accounts, the accounts must be prepared to Australian accounting standards.

Questions for Response

In light of the Annual Report and more specifically the Financial Assets disclosed in the Statement of Financial Position and the application of the Listing Rules stated above, please respond to each of the following questions.

1. Is the Company able to confirm that, in the directors' opinion, the Annual Report:
 - (a) complies with Australian Accounting Standards; and
 - (b) gives a true and fair view of the financial performance and financial position of the Company?
2. It would appear from Note 9 that the Financial Assets held by the Company are not available for use by the Company as the term deposits are required to support the various arrangements listed in point C above. Please advise whether or not this is the case and, if so, please explain how the disclosures in the Annual Report concerning the Financial Assets comply with paragraph 48 of Australian Accounting Standards Board *107 Statement of Cash Flows*.
3. We note that the Financial Assets have been classified as current assets in the Annual Report. Please explain the basis for this and which category of Australian Accounting Standards Board *101 Presentation of Financial Statements* paragraph 66 the Company believes is applicable.
4. In light of its answers to questions 1, 2 and 3 above, does the Company consider that its financial condition is sufficient to warrant the continued quotation of its securities and its continued listing on ASX in accordance with the requirements of Listing Rule 12.2? In answering this question, please also explain the basis for this conclusion.
5. In light of its answer to question 4 above, is the Company proposing to take any steps to improve its financial condition so that it can meet the requirements of Listing Rule 12.2?
6. Please confirm that the Company is in compliance with the Listing Rules and, in particular, Listing Rule 3.1.

Please note that ASX reserves its right under Listing Rule 18.7A to release this letter and the Company's response to the market. Accordingly, the Company's response should address each question separately and be in a format suitable for release to the market.

Unless the information is required immediately under Listing Rule 3.1, a response is requested as soon as possible and, in any event by **no later than 9.30am AEDT on Monday, 21 September 2015**. If the information is required immediately under Listing Rule 3.1, you should discuss with ASX whether it is appropriate to request a trading halt in the Company's securities under Listing Rule 17.1.

Any response should be sent to me by return email. It should not be sent to the ASX Market Announcements Office.



ASX

If you have any queries regarding any of the above, please contact me.

Yours sincerely,

[sent electronically without signature]

Violetta Codreanu
Adviser, Listings Compliance (Sydney)