
**QUESTIONS AND ANSWERS IN RELATION TO
BURSA MALAYSIA SECURITIES BERHAD ACE MARKET LISTING REQUIREMENTS
(As at 1 March 2021)**

CHAPTER 8 – CONTINUING LISTING OBLIGATIONS

General

8.1 What are the sectors that are prescribed by Bursa Securities for entities listed on the ACE Market?

The sectors for entities listed on the Official List of the ACE Market are as prescribed by Bursa Securities from time to time. The list of sectors can be obtained from Bursa Securities' official website at www.bursamalaysia.com, or upon request.

Shareholding spread

8.2 Pursuant to Rule 8.02(1) of the ACE LR, a listed corporation must ensure that at least 25% of its total listed shares (excluding treasury shares) are in the hands of the public shareholders. Do these public shareholders need to hold at least 1 board lot, i.e. 100 shares each?

No, there is no minimum number of shares that need to be held by these public shareholders.

8.3 On 5 August 2009, *D Bhd*'s public shareholding spread is 18% of its total listed shares (excluding treasury shares).

(a) What are *D Bhd*'s key obligations under the ACE LR in relation to this non-compliance?

D Bhd must take immediate steps to comply with the public shareholding spread requirement.

Pursuant to Rule 8.02(3) of the ACE LR, *D Bhd* must immediately announce to Bursa Securities that it does not comply with the required shareholding spread prescribed under Rule 8.02(1). *D Bhd* must include the information set out in paragraph 3.2 of Guidance Note 13 in its announcement. After that, *D Bhd* must announce the status of its efforts to comply with the public shareholding spread requirement for each quarter of its financial year in accordance with paragraphs 3.3 and 3.4 of Guidance Note 13.

If *D Bhd* requires an extension of time to rectify its situation, it must request for an extension under Rule 8.02(4) of the ACE LR. However, even though an extension of time is granted, *D Bhd* must comply with the public shareholding spread requirement as soon as possible.

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- (b) On 30 August 2009, *D Bhd*'s public shareholding spread is 9% of its total listed shares (excluding treasury shares). What is *D Bhd*'s additional obligation in regard to its public shareholding spread of 9%?**

In addition to the disclosure obligations under Question (a) above, *D Bhd* must immediately announce to Bursa Securities the information set out in paragraph 5.4 of Guidance Note 13.

- (c) When will the trading of securities of *D Bhd* be suspended after its announcement in Question (b) above?**

Pursuant to Rule 16.02(2)(a) of the ACE LR, Bursa Securities shall suspend trading of securities of *D Bhd* upon expiry of 30 market days from the date of *D Bhd*'s announcement. However, if the public shareholding spread of *D Bhd* increases to above 10% before the expected date of suspension, *D Bhd* should immediately inform Bursa Securities of its improvement in its public spread and seek its confirmation on whether the suspension will still be imposed.

In addition, where appropriate, Bursa Securities may also take such enforcement action as it deems fit against *D Bhd* pursuant to Rule 16.19 of the ACE LR.

- 8.4 On 5 August 2009, pursuant to a take-over offer, *Company P* holds 76% of the listed shares (excluding treasury shares) of *Y Bhd*, a listed corporation. If *Company P*'s intention is to maintain *Y Bhd*'s listing status, what are *Y Bhd*'s key obligations in regard to its non-compliance with the public shareholding spread requirement prescribed under Rule 8.02(1) of the ACE LR?**

Y Bhd must take immediate steps to comply with the public shareholding spread requirement.

Pursuant to Rule 8.02(3) of the ACE LR, *Y Bhd* must announce that it does not comply with the required shareholding spread prescribed in Rule 8.02(1) of the ACE LR. *Y Bhd* must include the information set out in paragraph 3.2 of Guidance Note 13 in its announcement.

Y Bhd must announce the status of its efforts to comply with the public shareholding spread requirement for each quarter of its financial year in accordance with paragraphs 3.3 and 3.4 of Guidance Note 13.

If *Y Bhd* requires an extension of time to rectify its situation, it must request for an extension under Rule 8.02(4) of the ACE LR. However, even though an extension of time is granted, *Y Bhd* must comply with the public shareholding spread requirement as soon as possible.

- 8.5 On 19 August 2009, pursuant to a take-over offer, *Company X* holds 91% of the listed shares (excluding treasury shares) of *Z Bhd*, a listed corporation. If *Company X*'s intention is to maintain *Z Bhd*'s listing status, what must *Z Bhd* do?**

Pursuant to Rule 9.19(48) of the ACE LR, *Z Bhd* must announce that 90% or more of its shares are being held by *Company X*. *Z Bhd* must include the information set out in Part J of Appendix 9A in the announcement.

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After that, *Z Bhd* may withdraw its listing from the Official List of Bursa Securities under Rule 16.07 of the ACE LR. In requesting to withdraw its listing, *Z Bhd* need not comply with the requirements under Rule 16.06 of the ACE LR including the requirement to obtain shareholder approval.

Lower public shareholding spread

8.5A Pursuant to paragraph 2.2 of Guidance Note 13, the Exchange may accept a public shareholding percentage of lower than the 25% threshold as prescribed in Rule 3.10(1) and Rule 8.02(1) of the ACE LR if the quantitative market capitalisation criteria¹ under paragraph 2.2(a) of Guidance Note 13 and qualitative criteria² under paragraph 2.2(b) of Guidance Note 13 are met. In this regard, how would the Exchange assess whether the qualitative criteria have been met?

In assessing or determining that the qualitative criteria have been met, the Exchange may consider or take into account (among others) the following:

Qualitative criteria	Consideration
Sufficient liquid market	<ul style="list-style-type: none"> • The concentration of public shareholdings in the applicant or listed corporation • Number of shares in issue in the applicant or listed corporation • The spread between the bid and ask price and trading volume of the shares of the listed corporation
Orderly and fair trading	<ul style="list-style-type: none"> • Any queries issued to the listed corporation relating unusual market activities • Any circumstances indicating manipulative activities or any issuance of market alerts in respect of the shares of the applicant or listed corporation
Satisfactory corporate governance conduct and compliance record	<ul style="list-style-type: none"> • If there is any enforcement proceeding or action commenced or taken against the applicant or listed corporation or its directors by the relevant authorities, including the Exchange and the Securities Commission

¹ A listed corporation must meet the quantitative market capitalisation of RM1 billion or more but less than RM3 billion for minimum acceptable lower spread of 20% or market capitalisation of RM3 billion or more for minimum acceptable lower public spread of 15%.

² In respect of the qualitative criteria, the Exchange may accept lower public spread for an applicant or listed corporation if the Exchange is satisfied that:

- (a) there is, or will be, sufficient liquid market in the shares of the applicant or listed corporation;
- (b) there is, or will be, orderly and fair trading in the shares of the applicant or listed corporation;
- (c) the applicant or listed corporation and its directors have satisfactory corporate governance conduct and compliance record with the Listing Requirements and securities laws; and
- (d) there is reasonable justification necessitating the Lower Public Spread for the applicant or listed corporation.

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Qualitative criteria	Consideration
Reasonable justification necessitating the lower public spread	<ul style="list-style-type: none"> • All relevant facts and circumstances that warrant a lower public spread such as actual non-compliance of required public spread • Where the circumstance is that of actual non-compliance of required public spread, whether the non-compliance is beyond the reasonable control of the listed corporation, its controlling shareholders or its directors

8.5B Pursuant to Rule 2A.1 of Guidance Note 13, a listed corporation that has been granted with lower public spread is required to immediately notify the Exchange when it becomes aware of any of the Specified Decreases³. What are the examples of instances when a listed corporation would be deemed to become aware of any of the Specified Decreases?

A listed corporation would be deemed to become aware of the Specified Decrease (if any) -

- when it requests for a copy of the Record of Depositors from Bursa Malaysia Depository Sdn Bhd;
- during the preparation of its annual returns or annual reports; or
- when it undertakes a corporate exercise or corporate proposal;

as the listed corporations would have sufficient information in the said circumstances to be able to reasonably discover whether there is any Specified Decrease.

Notwithstanding the above, a listed corporation must also immediately notify the Exchange if it becomes aware of any Specified Decrease in any circumstances other than those stated above.

Cash Companies

8.6 If a listed corporation's assets on a consolidated basis, consist of 70% or more of cash or short term investments, or a combination of both, is the listed corporation automatically considered a "Cash Company"?

No, it is not. The listed corporation must notify Bursa Securities immediately of the fact and Bursa Securities will determine as to whether the listed corporation should be considered a "Cash Company". Bursa Securities will notify the listed corporation of its determination.

³ Under Rule 2A.1 of Guidance Note 13, a listed corporation approved with a lower public spread must immediately notify the Exchange when it becomes aware of any of the following:

- (a) any decrease in its issued share capital;
- (b) any decrease in the percentage of the public spread below the percentage approved by the Exchange; and
- (c) any decrease of the said listed corporation's average market capitalisation for the preceding 12 months to below the prescribed threshold as set out in paragraph 2.2(a) above.

(collectively "the Specified Decreases").

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[Questions & Answers]**8.7 What are the “short-dated securities” referred to in Rule 8.03(4) of the ACE LR?**

“Short-dated securities” include money market instruments, structured deposits, debt securities, or any other type of deposit or products which are short term in nature (i.e. less than 12 months) offered by financial institutions.

8.8 A Bhd has disposed of its core business resulting in it triggering the Cash Criterion. Before it is classified as a Cash Company, A Bhd has existing investments in short-dated securities with institutions other than financial institutions licensed by Bank Negara Malaysia (“BNM”). How does A Bhd comply with Rule 8.03(4) of the ACE LR?

Upon triggering the Cash Criterion, these short-dated securities must be placed with a custodian. When these short-dated securities mature or are converted into cash, A Bhd must immediately place the funds with an account opened with financial institutions licensed by BNM, and operated by the custodian.

8.9 In year 2010, X Bhd disposes of its core business relating to printing and has been classified as a Cash Company by Bursa Securities. X Bhd intends to expand its other existing business, which is cartridge manufacturing. Can X Bhd regularise its condition by developing this cartridge manufacturing as its new core business?

No, a regularisation proposal under Rule 8.03 of the ACE LR must involve an acquisition of a new core business and not by developing the Cash Company’s existing business.

8.10 Pursuant to Rule 8.03(5)(a)(ii) of the ACE LR, a Cash Company must appoint a Sponsor within 3 months from the date it announces that it is a Cash Company. Who can be the Cash Company’s Sponsor in this instance?

Any person from the Register of Sponsor can be the Cash Company’s Sponsor. This includes a Sponsor that has acted for the Cash Company during the Sponsorship Period.

8.11 Rule 8.03(5)(b) of the ACE LR requires a Cash Company to retain the services of a Sponsor for at least 3 full financial years after it is no longer considered a Cash Company. Who can be the Cash Company’s Sponsor in this instance?

The Sponsor who is appointed by the Cash Company in Question 0 above must act as the Cash Company’s Sponsor in this instance for at least the first full financial year. After that, the Cash Company can either retain that Sponsor or retain another person from the Register of Sponsor to be the Cash Company’s Sponsor for the remaining 2 full financial years.

8.12 A Bhd’s Sponsorship Period ends in 2009. In 2010, A Bhd is classified as a Cash Company. In accordance with Rule 8.03(5)(a)(ii) of the ACE LR, A Bhd appoints X as its Sponsor within 3 months from the date it announces that it is a Cash Company. Before A Bhd completes the implementation of its regularisation proposal, can it replace X with any other person as its Sponsor?

No, A Bhd must retain X as its Sponsor until it completes the implementation of its regularisation proposal and for at least 1 full financial year after A Bhd is no longer considered as a Cash Company. If X resigns or has its appointment terminated before A Bhd completes its regularisation proposal, A Bhd is deemed to have failed its obligation to regularise under Rule 8.03(5)(a) of the ACE LR. In this case, Bursa Securities may suspend the trading of A Bhd’s listed securities and de-list A Bhd.

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8.13 Is a Cash Company required to disclose its failure to comply with any obligation imposed pursuant to Rule 8.03(5)(a) of the ACE LR?

Yes, the Cash Company must announce its failure to comply with a particular obligation imposed pursuant to Guidance Note 2 and ensure that the announcement complies with the standard of disclosure set out in Rule 9.35 of the ACE LR with regard to the contents of the announcement. In addition, the Cash Company must also include the consequences of such failure in its announcement.

8.14 Can a Cash Company include the announcement on the status of its proposal as required under paragraph 2.1(b) of Guidance Note 2 (“status report”) in its quarterly report?

No, the quarterly announcement of the status report must be made separately.

8.15 *X Bhd* has been classified as a Cash Company by Bursa Securities. Pursuant to Rule 8.03(5)(a)(i) of the ACE LR, *X Bhd* submits a proposal to acquire a new core business to Bursa Securities for approval. While *X Bhd* is awaiting Bursa Securities’ approval, it has ceased to trigger the Cash Criterion. Can *X Bhd* apply to Bursa Securities for it to be no longer considered a Cash Company?

No, pursuant to Rule 8.03(8) of the ACE LR, *X Bhd* **must** complete the implementation of the proposal before it can apply to Bursa Securities for it to be no longer considered a Cash Company. So, even though *X Bhd* has ceased to trigger the Cash Criterion, that would not entitle it to be no longer considered as a Cash Company until it has completed its proposal to regularise its condition.

Listed corporations with inadequate level of operations

8.16 Is there any difference in the obligations of an affected listed corporation⁴ under the previous framework set out in Guidance Note 3 and the new framework in Rule 8.03A of the ACE LR?

Under the new framework in Rule 8.03A of the ACE LR, generally the obligations of the affected listed corporation remain the same as that of a GN3 Company including the requirement to submit and implement a regularisation plan within the prescribed timeframe. However, taking into consideration that there are differences between these listed corporations (an affected listed corporation vis-a-vis a GN3 Company), under the new framework -

- (a) an affected listed corporation will not be tagged or classified as a “GN3” Company;
- (b) if the affected listed corporation fails to regularise its condition, Bursa Securities has the discretion to suspend and delist its securities, whilst in the case of a GN3 Company, the suspension and delisting is automatic; and

⁴ As stipulated in Rule 8.03A(3) of the ACE LR, an affected listed corporation refers to a listed corporation which has triggered the criteria of inadequate level of operations under Rule 8.03A(2) of the ACE LR namely that the listed corporation has –

- (a) suspended or ceased all of its business or its major business; or
- (b) suspended or ceased its entire or major operations; or
- (c) an insignificant business or operations.

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- (c) there is an express provision in Rule 8.03A for the affected listed corporation to apply not to undertake any regularisation plan if it is able to demonstrate to Bursa Securities' satisfaction that its remaining business is sustainable and has growth prospects with appropriate justifications, and its level of operations remains suitable for continued listing.

8.17 Which regularisation obligation must a listed corporation comply with in the following scenarios:**Scenario 1**

The listed corporation first triggers the criteria for inadequate level of operations set out in Rule 8.03A of the ACE LR and subsequently triggers the Prescribed Criteria set out in Guidance Note 3.

Scenario 2

The listed corporation first triggers the criteria for inadequate level of operations set out in Rule 8.03A of the ACE LR and subsequently triggers the Cash Criterion in Rule 8.03 of the ACE LR.

The general principle is that the listed corporation must comply with the stricter obligations.

Hence in Scenario 1, the listed corporation must comply with the obligations imposed on a GN3 Company under Rule 8.04 and Guidance Note 3 of the ACE LR.

In Scenario 2, the listed corporation must comply with the obligations imposed on a Cash Company under Rule 8.03 and Guidance Note 2 of the ACE LR.

In both the Scenarios, the timeframe for the listed corporation to regularise its condition commences 12 months from the date the listed corporation announces that it triggers the criteria for inadequate level of operations under Rule 8.03A of the ACE LR.

GN3 Companies**8.18 When must a listed corporation assess whether it is a GN3 Company?**

All listed corporations must on a continuing basis undertake a self assessment of their financial condition and level of operations. At any given time if a listed corporation finds that it triggers any one or more of the criteria prescribed in paragraph 2.1 of Guidance Note 3 ("**Prescribed Criteria**"), the listed corporation must comply with the requirements of Rule 8.04 of the ACE LR and Guidance Note 3.

8.19 Pursuant to Rule 8.04(3)(a)(ii) of the ACE LR, a GN3 Company must appoint a Sponsor within 3 months from the date it announces that it is a GN3 Company. Who can be the GN3 Company's Sponsor in this instance?

Any person from the Register of Sponsor can be the GN3 Company's Sponsor. This includes a Sponsor that has acted for the GN3 Company during the Sponsorship Period.

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- 8.20 Rule 8.04(3)(c) of the ACE LR requires a GN3 Company to retain the services of a Sponsor for at least 3 full financial years after it is no longer considered a GN3 Company. Who can be the GN3 Company's Sponsor in this instance?**

The Sponsor who is appointed by the GN3 Company in Question 0 above must act as the GN3 Company's Sponsor in this instance for at least the first full financial year. After that, the GN3 Company can either retain that Sponsor or retain another person from the Register of Sponsor to be the GN3 Company's Sponsor for the remaining 2 full financial years.

- 8.21 A Bhd's Sponsorship Period ends in 2009. In 2010, A Bhd is classified as a GN3 Company. In accordance with Rule 8.04(3)(a)(ii) of the ACE LR, A Bhd appoints X as its Sponsor within 3 months from the date it announces that it is a GN3 Company. Before A Bhd completes the implementation of its regularisation plan, can it replace X with any other person as its Sponsor?**

No, A Bhd must retain X as its Sponsor until it completes the implementation of its regularisation plan and for at least 1 full financial year after A Bhd is no longer considered as a GN3 Company. If X resigns or has its appointment terminated before A Bhd completes its regularisation plan, A Bhd is deemed to have failed its obligation to regularise under Rule 8.04(3)(a) of the ACE LR. In this case, Bursa Securities shall, in accordance with Rule 8.04(5) of the ACE LR –

- (a) suspend the trading of the GN3 Company's listed securities on the next market day after 5 market days from the date of notification of suspension by Bursa Securities; and
- (b) de-list the GN3 Company subject to the latter's right to appeal against the de-listing.

- 8.22 X Bhd is a GN3 Company. Pursuant to Rule 8.04(3)(a)(i) of the ACE LR, X Bhd submits a plan to regularise its condition to Bursa Securities for approval. While X Bhd is awaiting Bursa Securities' approval, it has ceased to trigger the Prescribed Criteria. Can X Bhd apply to Bursa Securities for it to be no longer considered a GN3 Company?**

No, pursuant to Rule 8.04(8) of the ACE LR, X Bhd must complete the implementation of the plan to regularise its condition before it can apply to Bursa Securities for it to be no longer considered a GN3 Company. So, even though X Bhd has ceased to trigger the Prescribed Criteria, that would not entitle it to be no longer considered as a GN3 Company until it has completed its plan to regularise its condition.

- 8.23 ABC Berhad, a listed corporation has changed its financial year end from 31 December 2009 to 31 March 2010. ABC Berhad's financial statements for the said period of 15 months show that it has incurred losses. For the purposes of determining if ABC Berhad triggers one of the Prescribed Criteria in Guidance Note 3, will the losses for the whole 15 months period be considered?**

Yes, the losses incurred for the full financial year of ABC Berhad i.e. the 15 months period from 1 January 2009 to 31 March 2010, will be taken into consideration. If the losses equal to or exceed the amount of its shareholders' equity and the shareholders' equity is 50% or less of the issued and paid up capital of the listed corporation at the end of the financial year 31 March 2010, ABC Berhad will trigger the Prescribed Criteria.

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- 8.24 Which type of accounts can be used by a listed corporation in order to make a determination of “shareholders’ equity”, “total assets employed”, “major” and “insignificant business or operations” under the Prescribed Criteria?**

The determination of “shareholders’ equity”, “total assets employed”, “major” and “insignificant business or operations” under the Prescribed Criteria must be based on either the audited or unaudited accounts, which includes the management accounts of the listed corporation.

- 8.25 Paragraph 2.2(a) of Guidance Note 3 provides that “shareholders’ equity” refers to the equity attributable to equity holders of the listed corporation. Is non-controlling interest included in determining “shareholders’ equity”?**

No, shareholders’ equity excludes non-controlling interest.

- 8.26 The auditors of XYZ Bhd highlighted a material uncertainty related to going concern on XYZ Bhd in its latest audited financial statements for the financial year ended 30 June 2017 (“Financial Statement”). XYZ Bhd’s shareholders’ equity on a consolidated basis based on the Financial Statement was 60% of its share capital (excluding treasury shares).**

However, XYZ Bhd’s subsequent quarterly results for the period ended 30 September 2017 (“quarterly results”) shows that its shareholders’ equity has reduced to 35% of its share capital (excluding treasury shares).

Will XYZ Bhd trigger the Prescribed Criteria upon the release of its quarterly results?

Yes, since XYZ Bhd’s auditors have highlighted a material uncertainty related to going concern on XYZ Bhd in its latest Financial Statement and based on XYZ Bhd’s latest available results which is the quarterly results, its shareholders’ equity is less than 50% of its share capital (excluding treasury shares), XYZ Bhd will trigger the Prescribed Criteria pursuant to paragraph 2.1(g) of Guidance Note 3. In this event, XYZ Bhd must immediately make the First Announcement under paragraph 4.1(a) of Guidance Note 3 upon the release of its quarterly results.

- 8.27 Are the obligations of a GN3 Company whose securities have been suspended from trading different from the obligations of a GN3 Company whose securities have not been suspended from trading?**

No, the obligations are the same irrespective of whether the securities of the GN3 Company have been suspended or not from trading.

- 8.28 On 3 February 2010, X Bhd triggers the Cash Criterion and announces that it is a Cash Company. On 2 June 2010, X Bhd also triggers one of the Prescribed Criteria and announces that it is a GN3 Company.**

- (a) Must X Bhd comply with the regularisation obligations set out in Rule 8.03 (as a Cash Company) or 8.04 (as a GN3 Company) of the ACE LR?**

X Bhd must comply with the stricter obligations i.e. those imposed on a Cash Company under Rule 8.03 and Guidance Note 2 of the ACE LR. Among others, the listed corporation must place at least 90% of its cash and short-dated securities in an account opened with a financial institution licensed by Bank Negara Malaysia and operated by a custodian.

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- (b) **What is the applicable timeframe for *X Bhd* to submit its proposal to regularise its condition as a Cash Company and GN3 Company?**

X Bhd must regularise its condition by submitting a proposal to Bursa Securities within 12 months from the date *X Bhd* announces that it is a Cash Company, i.e. by 2 February 2011.

- (c) **Must *X Bhd* regularise its condition by undertaking a regularisation proposal/plan under Rule 8.03(5)(a) or that under Rule 8.04(3)(a)(i) of the ACE LR?**

X Bhd must undertake a regularisation proposal under Rule 8.03(5)(a) of the ACE LR. This proposal must be able to regularise *X Bhd*'s condition as a Cash Company and GN3 Company. In this regard, the proposal must be one to acquire a new core business as required under Rule 8.03(5)(a)(i), and which will also fulfill the conditions set out in paragraphs 5.2 and 5.3 of Guidance Note 3.

8.29 Paragraph 2.1(e) of Guidance Note 3 sets out a criterion of a winding up of the listed corporation's subsidiary or associated company which accounts for at least 50% of the total assets employed of the listed corporation on a consolidated basis ("Criterion 2.1(e)").

- (a) **If a winding-up order has been made against such subsidiary or associated company of a listed corporation but the winding-up order is either stayed or under appeal, will the listed corporation still be classified as a GN3 Company?**

Yes, a stay order only has the effect of suspending the operation of the winding-up order. It does not change the fact that Criterion 2.1(e) has been triggered. Thus the classification as a GN3 Company will take effect. Similarly, if the winding-up order is pending appeal, the listed corporation will nonetheless be classified as a GN3 Company, pending the outcome of the appeal.

- (b) **Will a winding-up order against a listed corporation, instead of such subsidiary or associated company of a listed corporation, trigger Criterion 2.1(e)?**

No. However, pursuant to Rule 16.11(2)(d) of the ACE LR, Bursa Securities shall de-list a listed corporation where a winding up order has been made against the listed corporation itself.

8.30 What are the measures that will be taken by Bursa Securities to assist investors in identifying listed corporations which are GN3 Companies?

The full list of GN3 Companies and announcements relating to them are available on Bursa Malaysia's website. Hence, investors may access Bursa Malaysia's website to be kept informed and updated on the status of the financial condition of the GN3 Companies.

Compliance with enhanced regularisation plan requirements

8.31 *X Bhd* triggers the Prescribed Criteria under Guidance Note 3 on 29 December 2014 but has not submitted its regularisation plan to Bursa Securities. Is *X Bhd* required to comply with the enhanced requirements on regularisation plan in paragraphs 5.3, 5.4 and 5.5 of Guidance Note 3 which takes effect on 27 January 2015?

X Bhd must comply with the enhance requirements on regularisation plan in paragraphs 5.3, 5.4 and 5.5 of Guidance Note 3 if it submits its regularisation plan to Bursa Securities on or after 27 January 2015.

8.31A *Y Bhd* is a GN3 Company which intends to undertake a regularisation plan to regularize its financial condition pursuant to Rule 8.04 and GN3 of the ACE LR. In the regularisation plan submitted to Bursa Securities, *Y Bhd* has included information relating to its financial forecast. What are the specific requirements under the ACE LR that *Y Bhd* must comply with in relation to the disclosure of financial forecast in the regularisation plan?

Y Bhd and its Sponsor or Adviser must ensure that the preparation and disclosure of the financial forecast in the regularisation plan comply with Chapters 9 and 10 in Division 1, Part II of the SC's Prospectus Guidelines in relation to future financial information ("**SC FFI Standards**") as required under Rule 2.19A of the ACE LR. *Y Bhd* must also ensure that its reporting accountant reviews and reports on the underlying accounting policies and assumptions relied on in the preparation of the financial forecast in accordance with the SC FFI Standards.

In addition to the above, *Y Bhd* must, amongst others, ensure that -

- the contents of the regularisation plan submitted to Bursa Securities comply with the requirements as set out in Rule 2.18 of the ACE LR; and
- the draft circular submitted to Bursa Securities together with the regularisation plan complies with the standard of disclosure for circulars as prescribed under Rule 9.35 of the ACE LR.

Appointment of Adviser for proposals

8.32 Pursuant to Rule 8.06 of the ACE LR, a listed corporation must engage the services of an Adviser where it undertakes such corporate proposals or activities prescribed by Bursa Securities as requiring the services of an Adviser.

(a) What are such corporate proposals or activities that require the services of an Adviser?

The corporate proposals or activities which have been prescribed by Bursa Securities as requiring the services of an Adviser are set out in paragraph 2.0 of Guidance Note 19. In addition, the corporate proposals or activities which do not require the services of an Adviser are set out in paragraph 3.0 of Guidance Note 19.

(b) Who can be the Adviser?

The Adviser must be a person registered on the Register of Sponsors of the ACE Market.

- 8.33** Are Rule 8.06 and Guidance Note 19 applicable to all listed corporations or listed corporations which are still under the Sponsorship Period only?

Yes, Rule 8.06 and Guidance Note 19 apply to all listed corporations, including those under the Sponsorship Period.

Material Variations

- 8.34** Rule 8.24(1)(b) of the ACE LR requires a listed corporation to issue a circular to its shareholders and seek its shareholder approval for any material amendment, modification or variation to a proposal which has been previously approved by shareholders in general meeting. When is an amendment, modification or variation considered as “material”?

Pursuant to Rule 8.24(2)(b) of the ACE LR, an amendment, modification or variation is considered material if it can be reasonably expected to have a material effect on the decision of a holder of securities of the listed corporation in relation to such proposal.

- 8.35** Pursuant to Rule 8.24(3) of the ACE LR, an amendment, modification or variation to a proposal which has been approved by shareholders resulting from the direction or condition imposed by the relevant authorities does not require shareholder approval under Rule 8.24(1)(b) of the ACE LR.

Company A obtains shareholder approval for its corporate proposal i.e. to purchase a 10% interest in *Company B*. Subsequently, before making a submission for approval to the relevant authority, *Company A* revises its proposed purchase to a 30% interest in *Company B*. *Company A* then submits the amended proposal to the relevant authority for approval. The amended proposal is approved by the relevant authority. Although the amendment is material, it is already approved by the relevant authority. Would *Company A* still need to obtain shareholder approval for the amendment?

Yes, the material amendment to *Company A*'s proposal would still require shareholder approval under Rule 8.24(1)(b) of the ACE LR. Although the amended proposal may have been approved by the relevant authority, the amendment was not made pursuant to a direction or condition imposed by such authority.

- 8.35A** *ABC Bhd* raised RM50 million in its initial public offering (“IPO”) for the purposes as set out in items (1) to (3) of the table below and as represented in its prospectus. As at 30 April 2019, *ABC Bhd* had utilized RM29 million from the total proceeds raised as set out in column (i) of the table below. Subsequent to its listing, *ABC Bhd* decides to change the utilisation of the balance IPO proceeds in order to purchase a new land amounting to RM13 million. As such, *ABC Bhd* proposes to utilise the balance IPO proceeds earmarked for purchase of equipment and machineries to settle the purchase consideration of RM13 million as follows (items 2 and 4 of the table):

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No.	Details of Utilisation	IPO Proceeds (RM'000)	Actual Utilisation as at 30 Apr 2019 (RM'000) (i)	Balance IPO Proceeds (RM'000)	Revisions to Utilisation (RM'000)	Balance Revised Utilisation(RM'000)
1.	Repayment of bank borrowing	10,000	10,000	-	-	-
2.	Purchase of equipment and machineries	36,000	15,000	21,000	(13,000)	8,000
3.	Estimated listing expenses	4,000	4,000	-	-	-
4.	Purchase of land	-	-	-	13,000	13,000
	TOTAL	50,000	29,000	21,000	-	21,000

Is ABC Bhd required to seek shareholder approval for using its IPO proceeds for purchase of equipment and machineries to pay for its new land?

Yes, pursuant to Rule 8.24(1)(a) of the ACE LR, ABC Bhd is required to seek shareholder approval for the change to the utilisation of IPO proceeds since the proposed change of utilisation of proceeds amounting to RM13 million is material as it exceeds 25% of the total IPO proceeds raised:

$$\text{RM13 million/RM50 million} \times 100 = 26\%.$$

8.36 Is Rule 8.24 of the ACE LR only applicable to proposals where Bursa Securities will conduct a full review of the circulars i.e. the Full Review Circulars?

No, the approved proposal referred to in Rule 8.24 of the ACE LR covers all proposals that require shareholder approval.

Securities holders approval

8.37 Where the ACE LR specifies that a transaction or corporate proposal requires the approval of shareholders, would ratification of the transaction or corporate proposal by the shareholders be acceptable?

No, a listed corporation must obtain its shareholder approval before completing or implementing its transaction or corporate proposal.

Financial assistance

- 8.38** Rule 8.25(1) of the ACE LR stipulates that the requirements relating to the provision of financial assistance in the ACE LR are applicable to a listed corporation and its subsidiaries which are not listed on any stock exchange. Does this mean that a subsidiary listed on a stock exchange outside Malaysia is not required to comply with Rule 8.25 of the ACE LR if such subsidiary provides financial assistance?

Yes, the subsidiary listed on a stock exchange outside Malaysia is not subjected to the requirements under Rule 8.25 of the ACE LR. Instead, such subsidiary, in giving financial assistance, will be required to comply with its home exchange rules.

- 8.39** What are the disclosure requirements of a listed corporation in respect of financial assistance provided by the listed corporation or its subsidiaries not listed on any stock exchange pursuant to Rule 8.25(1)(ii) of the ACE LR?

Pursuant to paragraph 3.1 of Guidance Note 4, the listed corporation must announce any financial assistance provided by such listed corporation or its subsidiaries not listed on any stock exchange pursuant to Rule 8.25(1)(ii) of the ACE LR for each quarter of its financial year, simultaneously with its quarterly results pursuant to Rule 9.22 of the ACE LR and in any event no later than 2 months after the end of each quarter of its financial year. In this respect, the listed corporation must ensure that the announcement includes such information as set out in Annexure GN4-A of Guidance Note 4 and Appendix 8D (if applicable) of the ACE LR.

- 8.40** Will a listed corporation (other than a listed corporation whose activities are regulated by any written law relating to banking, finance companies or insurance and are subject to supervision by Bank Negara Malaysia or an equivalent foreign regulatory authority as Bursa Securities deems appropriate) which lends money pursuant to a moneylending licence ("Moneylending") be exempted from compliance with Rule 8.25 of the ACE LR?

No, a listed corporation which is involved in Moneylending is subject to and hence, must ensure compliance with Rule 8.25 of the ACE LR notwithstanding that it has a valid moneylending licence.

- 8.41** Will the Moneylending carried out by a listed corporation automatically fall within the ambit of Rule 8.25(1)(ii) of the ACE LR, as being those "necessary to facilitate the ordinary course of business of the listed corporation or its subsidiaries"?

No, the listed corporation must ascertain whether the Moneylending is "necessary to facilitate the ordinary course of business of the listed corporation or its subsidiaries" in accordance with Guidance Note 4.

- 8.42** In the absence of a specific regulatory framework governing "scheduled institutions" in the Financial Services Act 2013 which replaces the Banking and Financial Institutions Act 1989 ("BAFIA"), Rule 8.25(4)(c) of the ACE LR has been deleted, which previously exempted scheduled institutions which were registered and supervised by Bank Negara Malaysia under the BAFIA from complying with the requirements in Rule 8.25. Does it mean that all corporations which were previously "scheduled institutions" under the BAFIA must now comply with Rule 8.25 in full?

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Only corporations which were previously “scheduled institutions” and which are no longer subjected to Bank Negara Malaysia’s regulation and supervision⁵ must now adhere strictly to the requirements set out in Rule 8.25 when providing financial assistance.

On the other hand, previous “scheduled institutions” such as the development finance institutions which are prescribed under the Development Financial Institutions Act 2002⁶, and therefore, still regulated and supervised by Bank Negara Malaysia will continue to enjoy the exemption from the provision on financial assistance under Rule 8.25(4)(b) of the ACE LR.

8.43 A listed corporation grants a corporate guarantee to a third party for services rendered by the third party to the listed corporation’s non-wholly owned subsidiary. Is the corporate guarantee subject to disclosure requirements under Guidance Note 4?

No, a corporate guarantee granted to a subsidiary by a listed corporation would not be subject to Guidance Note 4 as it is provided pursuant to Rule 8.25(1)(iii) of the ACE LR and not Rule 8.25(1)(ii). In the circumstances, the quarterly disclosure under paragraph 3.1 of Guidance Note 4 is not applicable.

8.44 What is a moneylending company under Rule 8.25 of the ACE LR? Are corporate guarantees or loans granted to non-wholly owned subsidiaries and contractors regarded as moneylending under the ACE LR?

A moneylending company is defined under Rule 8.25(2)(a)(ii) of the ACE LR as a listed corporation or its subsidiary that lends or advances money in the ordinary course of business as a moneylender pursuant to the Moneylenders Act 1951. As such, provision of corporate guarantees or advances necessary to facilitate the ordinary course of business of the listed corporation or its subsidiary (i.e. for purposes of getting a contract or to enable a sub-contractor to commence work) would not be regarded as moneylending operations.

8.45 Under Rule 8.25(2)(c) of the ACE LR, a listed corporation must procure its shareholders’ prior approval for any provision of financial assistance to an associated company or joint arrangement where the aggregate amount provided compared to the net tangible assets of the group is 5% or more. In such circumstances, what is the prescribed content of the circular to be issued to the shareholders?

The minimum content of a circular for purposes of seeking shareholder approval for provision of financial assistance which is not a related party transaction is not specifically prescribed under the ACE LR. However, a listed corporation can seek guidance from the minimum content prescribed for circulars in relation to transactions as set out under Appendix 10B of the ACE LR.

⁵ For example, corporations which carry out building credit business, factoring or leasing business or development finance institutions which are not prescribed under the Development Financial Institutions Act 2002.

⁶ The existing prescribed development finance institutions are:

- (a) Bank Pembangunan Malaysia Berhad;
- (b) Bank Perusahaan Kecil & Sederhana Malaysia Berhad (SME Bank);
- (c) Export-Import Bank of Malaysia Berhad (EXIM Bank);
- (d) Bank Kerjasama Rakyat Malaysia Berhad;
- (e) Bank Simpanan Nasional; and
- (f) Bank Pertanian Malaysia Berhad (Agrobank)

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- 8.46 Pursuant to Rule 8.25(2)(a)(i) of the ACE LR, where a listed corporation or any of its subsidiaries provides financial assistance, the board of directors must ensure, amongst others, that the provision of financial assistance is fair and reasonable to the listed corporation. What would be considered as “fair and reasonable”?**

What would be considered as “fair and reasonable” is subjective and varies from case to case. To ascertain the fairness and reasonableness of the financial assistance granted, the board of directors is required to make an assessment of the circumstances and terms of the provision of financial assistance including comparisons with market practices. For instance, if the proposal is for a one-off lump sum payment to be given to a sub-contractor for services rendered in the listed corporation’s housing development project when the market practice is typically for advances to be given by way of instalments and subject to certification of staggered work done by the sub-contractor, the board of directors should scrutinise the proposal to see whether there are exceptional circumstances to justify that such an advance is nonetheless fair and reasonable.

- 8.47 Pursuant to Rule 8.25(2)(e) of the ACE LR, a moneylending company must make quarterly disclosures of certain information as prescribed not later than 7 market days after the end of each quarter of a financial year (“Quarterly Disclosure”). A moneylending company does not lend or advance any money in a particular quarter. Does it still have to make the Quarterly Disclosure?**

In a situation where there is no new money lending activities in that particular quarter and no outstanding advances or loans from the previous quarters, then for subsequent Quarterly Disclosure, the listed corporation would only need to make a negative statement to that effect in its Quarterly Disclosure. If there are still outstanding advances or loans, the listed corporation is required to comply with Rule 8.25(2)(e) of the ACE LR.

- 8.48 Can a listed corporation or any of its subsidiaries commence or continue to lend or advance monies to third party(ies) pursuant to its moneylending business?**

Pursuant to Rule 8.25(1)(ii) of the ACE LR, a listed corporation or any of its subsidiaries can provide such financial assistance where it is made pursuant to or where it is necessary to facilitate the ordinary course of business of the listed corporation or its subsidiaries. As such loans/advances made to a third party by the listed corporation or any of its subsidiaries in the ordinary course of its moneylending business is permitted. However, unless the listed corporation or its wholly owned subsidiary is exempted under Rule 8.25(4), the conditions set out in Rule 8.25 of the ACE LR must be satisfied and in particular, Rule 8.25(2). In this respect, the board of directors of the listed corporation would have to oversee the moneylending operations and the management of credit risk of the moneylending company including ensuring adequate policies and procedures are in place in relation to the matters set out in Rule 8.25(2)(a)(ii)(aa)-(dd). In addition to this, the listed corporation will have to make the relevant quarterly announcements for each of the moneylending company not later than 7 market days after the end of each quarter of the financial year as prescribed under Rule 8.25(2)(e) of the ACE LR.

**Chapter 8 Continuing Listing Obligations
[Questions & Answers]****8.49 What are “problem credits” as referred to in Rule 8.25(2)(a)(ii)(dd) of the ACE LR?**

“Problem credits” means such problems arising from, amongst others, the borrower’s non-compliance with the terms of the financial assistance including failure to meet repayment of principal/interest or collateral obligations. It is to be noted that the assessment as to what “problem credits” are by the listed corporation/board of directors should not be limited to actual occurrence of default only but may include possible defaults such as signs of the borrower having difficulties in complying with the terms of the financial assistance (e.g. making or requesting for partial or late payments).

8.50 Do all listed corporations which are subject to the requirements in paragraph 3.1 of Guidance Note 4 also have to make the quarterly disclosures stipulated in Rule 8.25(2)(e) of the ACE LR?

No, Rule 8.25(2)(e) is only applicable where a listed corporation or its subsidiary lends or advances money in the ordinary course of its business as a moneylender.

Electronic payment of cash distributions**8.51 Must a listed corporation amend its constitution to allow for payment of cash dividends electronically to its shareholders pursuant to Rule 8.28A of the ACE LR?**

By virtue of Rule 7.36 of the ACE LR, a listed corporation is in a position to pay cash dividends to its shareholders electronically pursuant to Rule 8.28A of the ACE LR regardless of what may be stated in its constitution in relation to cash dividend payment.

Notwithstanding this, to ensure that the listed corporation’s constitution are updated and comprehensive, it should proceed to amend the relevant provisions in its constitution that may be inconsistent with the requirements for the listed corporation to pay cash dividends electronically as set out in Rule 8.28A of the ACE LR.

8.52 What should a listed corporation do if its securities holders have not provided their bank account information to the Depository?

A listed corporation must take all reasonable and appropriate steps to engage and communicate with its securities holders on the availability and benefits of the electronic payment of cash distributions, for example, in the various channels or means set out in the directive dated 19 February 2010 (Ref. No. SR/TAC/ro/LD08/10) (“**Directive**”), and encourage its securities holders to provide their bank account information to the Depository. If, after taking such steps, the securities holders still do not provide their bank account information to the Depository, the listed corporation may continue to pay cash distributions to these securities holders in the existing manner as authorized under the listed corporation’s constituent documents or issuing documents such as the constitution, trust deed or terms of issuance.

8.53 Where can a listed corporation obtain its securities holders’ relevant contact details for purposes of compliance with Rule 8.28A(2) of the ACE LR?

A listed corporation can obtain its securities holders’ relevant contact details from the Depository when requesting for the bank account information.

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8.54 Must a listed corporation notify all its securities holders electronically for purposes of electronic notification under Rule 8.28A(2) of the ACE LR?

Currently, a listed corporation must provide electronic notification to all its securities holders who have provided their email details to the Depository to receive electronic notification. In addition, the listed corporation may also, at its discretion, provide other means of electronic notification such as notification via SMS to securities holders who have provided their mobile phone numbers only.

8.55 For purposes of compliance with Rule 8.28A(2) of the ACE LR, must a listed corporation provide the electronic notification to its securities holders by itself?

No, while a listed corporation is at liberty to issue the electronic notification itself, this function can also be done by the listed corporation's service provider such as the bank which debits the cash distributions from the listed corporation's account or through its share registrar.

8.56 When must a listed corporation notify its securities holders electronically under Rule 8.28A(2) of the ACE LR?

A listed corporation must notify its securities holders electronically, as soon as practicable after the cash distributions have been paid out of its account.

8.57 Who can be the service providers for the electronic payment of cash distributions?

The service providers for the electronic payment of cash distributions include the share registrars (whether external or in-house), the paying agents providing cash management services for payment to third parties such as the banks or lead arranges of the listed corporations who offer such facilities, and the Depository.

8.58 Can a listed corporation appoint another share registrar or the Depository to be its service provider for the electronic payment of cash distributions such as cash dividends whilst at the same time maintaining its existing share registrar for other services?

Yes, a listed corporation may appoint another share registrar or the Depository to be its service provider for the electronic payment of cash distributions such as cash dividends.

8.59 Does a listed corporation have to procure the consent of each of its securities holders to receive payment of the cash distributions electronically?

No. The consent will be procured by the Depository when the securities holders provide their bank account information to the Depository.

8.60 Is a listed corporation required to provide the services for electronic payment of cash distributions to its securities holders if payment of the dividend is satisfied by an issue of shares (dividend in specie) and in cash?

Where payment of dividend is to be satisfied by an issue of shares (dividend in specie) and in cash, a listed corporation is still required to provide the services for electronic payment of cash distributions to its securities holders in respect of the cash dividend portion. However, electronic payment of cash distributions is not applicable to the dividend in specie.

Chapter 8 Continuing Listing Obligations
[Questions & Answers]**8.61 Can a listed corporation pay other types of cash payments not falling within Rule 8.28A(3) of the ACE LR, to its securities holders electronically?**

Yes, a listed corporation may voluntarily pay the other types of cash payments not falling within Rule 8.28A(3) of the ACE LR, to its securities holders via direct crediting into the bank accounts of its securities holders who have provided their bank account details to the Depository. For this, the listed corporation must refer to and comply with the relevant requirements set out in the Rules of the Depository.

Poll Voting**8.61A Under Rule 8.31A(1) of the ACE LR, a listed corporation must, among others, ensure that any resolution set out in the notice of any general meeting, is voted by poll. What is an example of a matter that is not set out in the notice of general meeting and therefore not subjected to the poll voting requirements?**

Adjournment of general meeting due to unforeseen circumstances is an example of a matter that is not set out in the notice of general meeting.

8.61B Are resolutions set out in an addendum, errata or amendment to the notice of general meeting subjected to voting by poll under Rule 8.31A(1) of the ACE LR?

Yes, “notice of any general meeting” in Rule 8.31A(1) of the ACE LR includes any addendum, errata or amendment to the earlier notice of general meeting. Hence, any resolution set out in the addendum, errata or amendment to the notice of general meeting is subjected to voting by poll.

8.61C Under Rule 8.31A(2) of the ACE LR, a scrutineer appointed to validate the votes cast at the general meeting must fulfill the following requirements:

- the scrutineer must not be an officer⁷ of the listed corporation or its related corporation;
- the scrutineer must be independent of the person undertaking the polling process; and
- if the scrutineer is interested in a resolution to be passed at the general meeting, the scrutineer must refrain from acting as scrutineer for that resolution.

(a) In view of the above, can a listed corporation’s external auditor be appointed as a scrutineer for the general meeting?

Yes, the listed corporation’s external auditor can be appointed as the scrutineer for the general meeting so long as the external auditor is independent of the person undertaking the polling process and refrains from acting in a resolution that it may be interested in, e.g. the resolution seeking its reappointment.

⁷ “Officer” has the meaning given in section 2 of the Companies Act 2016 and includes the director, company secretary and employees.

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- (b) If the external auditor must refrain from acting as the scrutineer in a resolution seeking its reappointment, who can be the scrutineer to validate the votes cast for such resolution?**

The listed corporation may appoint any other person to be the scrutineer for such resolution so long as the said person is not an officer of the listed corporation or its related corporation and is independent of the person undertaking the polling process.