

Level 26, 44 Market Street  
Sydney NSW 2000  
Australia

+61 2 9089 8657  
www.acsa.com.au

ABN 80 072 659 619

1 March 2019

**Mavis Tan**

ASX Limited  
PO Box H224  
Australia Square NSW 1215  
Attention: Mavis Tan  
e: [mavis.tan@asx.com.au](mailto:mavis.tan@asx.com.au)

Dear Ms Tan,

**Australian Custodian Services Association – Submission on ASX Consultation Paper Simplifying, clarifying and enhancing the integrity and efficiency of the ASX listing rules.**

The Australian Custodian Services Association (ACSA) is the peak industry body representing members of Australia's custodial and administrator sector. Collectively, the members of ACSA hold securities and investments in excess of \$3.6 trillion in value in custody and under administration. Members of ACSA include BNP Paribas, Bank of America Merrill Lynch, Citi Securities, National Australia Bank Asset Servicing, JP Morgan, HSBC, Netwealth, State Street, RBC Investor Services and Northern Trust.

The views expressed in this letter are prepared by ACSA for the purposes of consideration by the ASX of the topics raised in the consultation paper *Simplifying, clarifying and enhancing the integrity and efficiency of the ASX listing rules* and should not be relied upon for any other purpose. The comments in this letter do not comprise financial, legal or taxation advice and should not be regarded as the views of any particular member of ACSA

ACSA is supportive of changes to the listing rules that will remove inefficient practices and bring the Australian market into line with best practice. Feedback to the consultation process is limited to topics that directly affect custodians and services provided to clients. Where no feedback is provided ACSA neither supports nor objects to the changes.

**Consultation Feedback**

Specific feedback on changes proposed in the consultation paper are set out below:

2.5 – Disclosure of meeting results – ACSA is fully supportive of changes to standardise the results of meetings including the number of shares voted for or against each resolution. Clients of ACSA

members require this information and it is seen as best practice for voting information to be readily available and easy to digest.

4.1 – Escrow Agreements – ACSA believes that the rules should be amended to recognise that custodians are acting as bare trustees and act off client instructions to perform transactions. As such ACSA believes that escrow agreements should remove the need for the nominee (as holder) to be a signed party to the escrow agreement and look through to the beneficial owner of the security to ensure that all terms of the escrow are adhered to. This would reinforce the fact that the beneficial owner has responsibility to adhere to the escrow period and any penalties for breaking the terms of the escrow should be borne by them.

4.4 – Voting restrictions – ACSA is supportive of the change to remove the need for waivers. However, members do not agree with the additional wording proposed to Rule 14.11. It should be noted that custodians currently include details of any restriction in their notices of meetings to their clients. Notices of meetings include disclaimers that state that by voting on a restricted resolution the voting party confirms that they are not excluded from voting on the resolution. Adding an additional process for beneficial owners to instruct that they are not excluded from voting in addition to casting a vote would create an additional inefficient manual process and be difficult to administer in practice. ACSA proposes that Rule 14.11 wording be amended to reflect that where a nominee votes on a restricted resolution the voting party has confirmed (by voting) that they are not excluded from voting on the resolution.

5.1 - Dividend distribution date – ACSA Members are supportive of changes to the distribution date however we believe that securities should be issued on the same date as payment of the cash dividend. This would remove the need to process a single market event across multiple days and provide parity for investors who would receive their entitlements on the same day.

5.2 Interest dates - ACSA is supportive of the removal of the rider regarding local state holidays impacting whether RD must be 7 or 8 calendar days before PD.

5.4 – Option Expiry – ACSA is supportive of the change

5.5 – ACSA is supportive of the shortening the period

5.6 - ACSA is supportive of the change

5.7 - ACSA is supportive of the change

5.8 - ACSA is supportive of the change

5.9 - ACSA is supportive of the change

5.10 ACSA does not believe that the current or proposed rules regarding court ordered meetings operate in a manner that is equitable or efficient for investors holding positions with custodians. There have been a number of recent events, where investors can elect to receive either cash or stock (or various combinations thereof) as a result of a scheme of arrangement which require approval via a court ordered meeting. For these event investors must submit an election by the

meeting date and retain this position until the scheme is effective. This poses challenges for custodians who hold positions in omnibus accounts and need to track client elections and block settlement from occurring from the meeting date until after effective date of the scheme which can take several weeks to occur. We believe that timetables should be amended to have a single date where client elections must be submitted by, after which the scheme should become effective and trading suspended.

5.14 - ACSA welcomes changes that reduce the adverse operational impact of deferred settlement. We believe that the Australian market does not comply with international best practice with regards to the management of changes to the issued capital of listed securities. No other major market utilises deferred settlement to manage events of this type and ACSA members believe that this is an opportune time to revisit the Australian rules and remove outdated and bespoke settlement processes.

An area of particular concern to ACSA are events where there is no change in the issued capital and deferred settlement is used to reflect a change in the corporate structure of an entity. These events create confusion for investors as trades are executed, and are instructed for settlement, on the deferred line on which the trades will never settle.

ACSA also believe that the concept of trading on entitlements from corporate action events on a deferred settlement basis before the entitlements have been distributed should be abolished. The process creates confusion amongst investors and can lead to inadvertent short selling of securities where entitlements received do not reconcile with positions traded.

A review by ACSA of processes used in a wide range of international markets including UK, Singapore, Hong Kong and India confirms that Australia is an outlier in how these events are managed. In the markets reviewed the record date was the last trading date on a pre-reconstruction basis and record date +1 represented the first trading date of the new security. Where these markets differ from Australia is that the market identifier (I.E. ISIN) used for the post reconstruction security became the new identifier (ISIN) which is used for all trading and settlement activity moving forward. Outstanding settlements on the pre-reconstructed security are either assimilated to the new security either upon settlement or through a housekeeping process.

ACSA welcomes further discussions on ways to remove deferred settlement to decrease the complexity of the Australian market, decrease risk and align to best practice.

ACSA does not believe that any changes are required to the IPO process and the current rules are in line with best practice and welcome any changes to shorten the deferred settlement period.

#### **Additional Feedback**

ACSA would like to see ASX introduce additional Listing Rules or Guidance Notices that include documented processes for assessing the taxation implications of new issuers entering the market. The absence of such process has been seen recently in the listing of Unibail-Rodamco which imposed the collection of French Transfer Taxation on Australian participants at short notice and will little time for system development.

**Contact Information**

ACSA looks forward to the ASX completing its review of the listing rules and welcomes further opportunity to participate in discussion based on the enhancements identified above or from other industry submissions.

If you have any questions in relation to this letter, please direct those questions to the Chair of the ACSA Operations Working Group, Scott Oakland (03 9633 4361, [scott.oakland@jpmorgan.com](mailto:scott.oakland@jpmorgan.com)).

Yours sincerely

*David Knights*

David Knights  
Chair, Australian Custodial Services Association