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** In cooperation with
Trench, Rossi e Watanabe
Advogados

5 March 2019

Mavis Tan
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Sydney NSW 2000

Dear Mavis

Submission on ASX consultation on proposed measures to simplify, clarify and enhance the integrity and efficiency of the ASX listing rules

Thank you for the opportunity to make a submission in response to ASX's consultation paper dated 28 November 2018 on proposed measures to simplify, clarify and enhance the integrity and efficiency of the ASX listing rules.

1. Overall submission

We are, on the whole, supportive of the proposed amendments to the ASX listing rules and the associated guidance notes. We consider the proposed changes will generally meet ASX's aims and will remove much of the ambiguity or inefficiencies that currently exists in the ASX listing rules.

Notwithstanding our general view above, we do have specific feedback on certain of the proposed changes, which are noted in our submissions.

Set out below are our submissions on certain consultation questions. In providing these submissions, we have focussed on transactional matters, especially as they relate to capital raisings or mergers and acquisitions, rather than provide submissions on all matters.

2. Improving market disclosures and other market integrity measures

2.1 Disclosure of underwriting agreements

We support the changes proposed in relation to the disclosure of underwriting arrangements.

Market practice on disclosure of the key features of underwriting agreements has been mixed in our experience and so the provision of consistent disclosure requirements is supported, especially given the importance of underwriting terms to investors.

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That said, we do have some observations on the proposed disclosure as follows:

- (a) **reach and content of proposed disclosure** - in general, we consider the disclosures proposed reach the correct balance between requiring the disclosure of the material terms of an underwriting arrangement whilst not requiring complete disclosure of what are commercially sensitive documents.

That said, certain situations sometime arise where it may be appropriate to disclose other material terms of an underwriting agreement, such as the terms of any escrow arrangement or prohibition on the issue of future equity securities for an agreed period of time. Does ASX intend that its list of key features of underwriting agreements be non-exclusive? If so, perhaps ASX might consider making that clear, so that listed entities need to consider making additional disclosure in their launch announcements, and/or adding additional rows in the Appendix 3B for disclosure of other material terms not covered by ASX's list above.

- (b) **extent of underwriting** - it is unclear what ASX means by the "extent" of the underwriting in listing rule 3.10.9 and the early proto-type of the Appendix 3B. Often capital raisings can be underwritten (i.e. all of the shortfall resulting from the proposed offer) or can be underwritten to a specific dollar amount. We consider the relevant rows in the proposed Appendix 3B (and the new rule 3.10.9) could benefit from clarity as to what ASX expects to be disclosed. In this regard, we would suggest that the response be expressed in either percentage or dollar terms (e.g. "100%" or "\$100 million") as applicable. We consider this is necessary to avoid the use of terms such as "fully", which is potentially subjective and has been the subject of regulatory scrutiny by ASIC.
- (c) **placements** - we note from the early proto-type of the Appendix 3B that placements are not covered. We appreciate that these capital raisings are conducted over short timetables and will be less dilutive than other capital raisings. However, placements are also often underwritten and so we would think that ASX's policy reasoning for consistent disclosure of underwriting arrangements would apply equally here.
- (d) **share purchase plans and dividend reinvestment plans** - we have some concerns that the disclosure of the key features of underwriting agreements for a securities purchase plan (**SPP**) or dividend reinvestment plan (**DRP**) may undermine the attractiveness of these structures and so would suggest that ASX consult further with brokers and underwriters on the potential commercial impact of these proposed disclosures.

As ASX will be aware, the usual means by which underwriters hedge their risk for transactions of this type is to sell, on a covered basis, the shortfall from the SPP or DRP over the relevant pricing period.

They do this by borrowing an equivalent number of shares from market sources and then selling those shares over the pricing period. Once the

offer price is set, the underwriter pays to the issuer the shortfall by using the proceeds of sale achieved over the pricing period and its own resources and then, once issued the shares by the issuer, uses those to "return" the borrowed shares.

This form of risk management involves the use of active market participation through share sales and our concern is that, if the key terms of the underwriting agreement are in the public domain at the time the proposed issue is announced, especially the extent of the underwriting or the fee/commission, underwriters may be commercially disadvantaged because the market will be aware of the likely trading activities of the underwriter in managing its risk.

SPP and DRP underwrites are, we understand, relatively high risk activities given the need for underwriters to match a VWAP when selling shares, but in a way that does not exert significant downside pressure to the market price. We are concerned that disclosure of underwriting terms may adversely impact the ability of underwriters to do that. That is also a potential issue for listed entities as well because their share price may be impacted as a result.

If underwriters are no longer able to adequately manage their exposure when underwriting SPPs or DRPs, then there is potential for the market for SPP and DRP underwrites to be adversely impacted as a result.

- (e) **underwriting of multiple dividends** - we have previously seen cases where listed entities have entered into underwriting agreements in respect of more than one dividend. Is the intention that ASX require disclosure of the underwriting terms when each dividend is declared or only once when the underwriting agreement is first entered into? Clarity on ASX's requirements in this regard is encouraged. Arguably disclosure for each dividend is more meaningful.
- (f) **fees for SPP and DRP underwrites** - as currently drafted, listed entities would need to disclose "the fee or commission payable" in connection with SPP or DRP underwriting arrangements. In our experience, underwriters do not necessarily receive an express fee for underwriting these capital raisings. Rather, the underwriters tend to receive the benefit of a discount to a VWAP price set under the DRP or SPP pricing period. So, for example, an underwriter may be required to subscribe for shortfall shares at a 1% discount to an agreed VWAP price, where shareholders may receive the benefit of a 2% discount in setting the subscription price payable under the SPP/DRP. In that case, the "commission" is factored into the subscription price payable by the underwriter and it will not receive a separate fee or commission payment from the listed entity.

Subject to our comments in (d) above, if ASX remains of the view that disclosure of the fee or commission payable in respect of SPP and DRP underwrites be required, we suggest that ASX consider amending the

words "*fee or commission payable*" in rule 3.10.9 and Appendix 3B to "*fee or commission (including any applicable discount to the subscription price) payable*" so that the position is clear.

2.2 Persons responsible for communication with ASX on listing rules issues

We support the proposed online education course and examination. ASX should consider making the online education course publicly accessible for voluntarily refreshing and testing understanding of the listing rules.

3. Making the rules simpler and easier to follow

3.1 Voting exclusions

We support the intention of ASX to provide greater consistency and certainty around voting exclusions in the table in rule 14.11.1.

That said, we have some observations:

- (a) we have concerns that replacing the current test of "*a person who might obtain a benefit, except a benefit solely in the capacity of a holder of ordinary securities, if the resolution is passed*" with references to "*a person who will obtain a material benefit as a result of [the relevant transaction] (except a benefit solely by reason of being a holder of ordinary securities in the entity)*" will not achieve ASX's stated aims. The alternative concept is still a subjective notion and is potentially equally as broad and uncertain as the existing formulation, which has not been difficult to apply in our experience. The proposed guidance is not sufficiently prescriptive and will still require listed entities to determine, on an individual basis, the potential benefit to a shareholder and whether that is material.
- (b) when summarising, in the guidance, what ASX considers to be a "material benefit", we are concerned that the proposed formulation is again quite subjective, in that it only needs to be something that would be likely to "incline" the recipient to vote differently to other security holders. There is no requirement of reasonableness here and the term "incline" appears to be a low bar and is not a readily understood term under Australian law. It also appears to assume that all other security holders will vote one way, whilst the recipient of the benefit will vote the other way. That is unlikely to be the case in reality.
- (c) the guidance in GN 24 and GN 12 is not entirely consistent as they relate to the wording of the voting exclusion. For example, in section 7.5 of GN 12, it states the relevant test as "*any other person who will obtain a material benefit as a result of the transaction (except a benefit solely by reason of being a holder of ordinary securities in the entity)*" whilst GN 24 omits the wording in parentheses. Secondly, the words "(or similar)" appear in section 7.7 of GN 24 when referencing success fees, but not in the same references in section 7.6 of GN 12, and we see no reason for the

discrepancy. We suggest that ASX consider and, if applicable, correct any inconsistency in the relevant sections of its guidance.

4. Efficiency measures

4.1 Escrow

We consider that the proposed changes to Chapter 9 of the listing rules create a sensible and balanced approach to the escrow requirements of ASX and will significantly reduce the time and cost of compliance for entities, without prejudicing the effectiveness of ASX escrow regime. We also welcome the proposed new guidance in the form of GN 11 which we consider will provide more certainty and further reduce the administrative burden for entities and their advisers.

Trustee and nominee arrangements

Under the revised Listing Rule 19.12, the term “controller” is now “a person who, or who in ASX’s opinion, directly or indirectly controls, or has a substantial economic interest in, the holder of restricted securities”

We consider that the application of the ‘controller’ concept in certain contexts may lead to complexities, for example, in relation to trust arrangements. In this regard, we welcome the additional guidance provided by ASX in paragraph 6.11 of GN 11. In particular, we note the guidance that for such trust arrangements, ASX will apply the escrow provisions on a “look-through” basis disregarding the trust and focusing instead on the underlying beneficial owner.

In our past dealings in relation to such trust arrangements, the guidance we have received from ASX has been that the escrow provisions are not applied on a “look through” basis. Instead the escrow analysis has focused on the legal owner of the securities (i.e. the trustee), rather than any beneficial owner. Accordingly, the escrow treatment will depend on the trustee entity as holder and the relevant controllers will be those of the trustee entity, as opposed to those of the beneficial owner. This position differs from that proposed in the new GN 11 now which focuses on the beneficial owner. While we do not necessarily maintain that this position is incorrect, we simply consider that it may give rise to certain practical issues.

For example, where the holder of restricted securities is a trustee entity holding such securities in its capacity as trustee of a discretionary family trust or superannuation fund, we understand from the new GN 11 that the escrow treatment and controller analysis would depend on the underlying beneficial owners of that trust, as opposed to the trustee entity as holder of the securities. However, the discretionary family trust may have indeterminate beneficiaries, which would mean that the entity (and the trustee holder itself) might be unable to undertake the escrow analysis of such unspecified beneficiaries and identify any controllers.

Further, there may be cases where the trustee holder considers the identity of the beneficiaries and their controllers to be confidential and refuses to provide this information to the entity (or to ASX on a confidential basis). Given the entity has an obligation to make appropriate enquiries with holders to determine whether there are any controllers (paragraph 5.3 of GN 11), we consider that this may lead to issues for entities. In such cases, we presume that an entity would be expected to approach ASX for guidance on a case-by-case basis and possibly seek the exercise of ASX's discretion not to require such information of the beneficial owners. However, we would welcome further guidance to clarify this position and, in particular, that the escrow treatment and controller analysis will not depend on the identity of the trustee entity.

We note that these considerations would also apply to custodian and nominee arrangements, as alluded to in paragraph 6.11 of GN 11. In addition, we consider that similar concerns arise, for example, where the holder of restricted securities is a trustee entity holding in its capacity as a responsible entity for an investment fund.

Meaning of terms "family" and "friends"

Separately, we refer to the comments in paragraph 2.2 of GN 11 in relation to situations involving an entity contemplating a new or re-compliance listing with an associated capital raising; in particular, where such an entity undertakes "*an issue of securities to related parties, promoters, professional advisers involved in the transaction, and their family, friends and associates, at a significant discount to the anticipated offer price for the capital raising*" [emphasis added].

We acknowledge the concerns raised by ASX, however, consider that a degree of ambiguity is created by references to general terms such as "family" and "friends". We query whether existing defined terms such as "related party" and "associate" sufficiently cover the persons contemplated by the terms "family" and "friends" and, if so, whether it may be more appropriate to use such existing defined terms.

4.2 Timetables for corporate actions

We have no particular concerns with the proposed amendments to the timetables for corporate actions.

5. **New and amended guidance**

5.1 GN 1 Applying for Admission - ASX Listings

We support the added admission requirements, including in relation to quality of disclosure, related party arrangements in respect of issuances of securities and simplified working capital guidelines under the assets test.

We recognise the need to have a working capital test that is clear and easy to apply. This includes making explicit what is currently implicit in rule 1.3.3 that an entity must set out in its listing document the objectives it is hoping to achieve from its capital raising and listing, so that it can then confirm it has adequate working capital to achieve those objectives.

While relevant parties will need to take into consideration these requirements to the timetable of a transaction, we consider the proposed changes are appropriate and should not prove difficult to apply. We do not consider there would be any unintended consequences of such changes.

5.2 GN 11 Restricted Securities and Voluntary Escrow

We refer you to our submission on escrow above.

5.3 GN 12 Significant Changes to Activities

We are generally supportive of the proposed changes to GN 12. We make the following submissions on an exceptions only basis which are of a technical nature:

Meaning of "family" and "friends" is ambiguous

The terms "family" and "friends" are used throughout GN 12. For example, paragraph 3.4 of GN 12 contains the following:

*"However, if the capital raising takes the form of a placement of securities to related parties, promoters, professional advisers involved in the transfer or their **family, friends** and associates at advantageous prices, ASX will look closely at whether it should apply escrow conditions to those securities." (emphasis added)*

We consider that the concepts of "family" and "friends" are ambiguous and should be either deleted or alternatively, clarified by way of providing definitions. Please refer to paragraph 4.1 for further commentary on this issue.

Pre-emptive capital raisings and pre-emptive loans

We view additional commentary regarding pre-emptive capital raisings and pre-emptive loans as helpful. However, we suggest that ASX provide additional clarity as to whether a pre-emptive capital raising could be used to fund a pre-emptive loan and if so, on what terms. In our view, the failure to provide such clarity risks issuers not being able to deploy capital for transactions in an efficient and effective manner.

5.4 GN 13 Spin-outs of Major Assets

We agree with the proposed amendments to GN 13 Spin-outs of Major Assets (**Amended GN 13**).

In particular, we think that the Amended GN 13, importantly, provides greater certainty to listed entities in relation to when ASX will regard an asset as a major asset, and when ASX will regard a spin-out as fair in all the circumstances.

We make the following suggestions regarding the Amended GN 13 for ASX's consideration:

- (a) we consider that the Amended GN 13 would benefit from the use of diagrams to supplement the guidance. This could assist listed entities to identify when Listing Rule 11.4 is engaged. For example, structure charts

could be included in section 4 of the Amended GN 13 to illustrate the different types of spin-out structures that are described; and

- (b) additionally, we consider that it would helpful if further guidance is included on the "intended to issue or offer securities with a view to becoming listed" aspect of Listing Rule 11.4. Paragraph 12 of the current Guidance Note 13 provides:

12. For the listing rule to apply, there is no time limit within which the acquiring entity must be listed after it has acquired the major asset. However, a significant period of time between the disposal of the major asset and the listing of the acquiring entity, for example 12 months, may indicate that, at the time of disposal, the listed entity was not aware that the acquiring entity intended to issue or offer securities with a view to becoming listed, in which case the listing rule does not apply.

This text has been removed from the Amended GN 13, and as such, listed entities may query whether ASX's position has changed. We consider that the Amended GN 13 should at a minimum clarify what timeframes ASX generally considers is appropriate in this context.

5.5 GN 21 The Restrictions on Issuing Equity Securities in Chapter 7 of the Listing Rules

Section 4.9 of the new Guidance Note 21 (**New GN 21**) states as follows in relation to Exception 9 - conversion of convertible securities:

This is a technical exception intended to ensure that the Listing Rules deal appropriately with convertible securities. The time at which an issue of convertible securities is tested to determine whether it falls within an entity's placement capacity under Listing Rules 7.1 and 7.1A is when they are issued, not when they are converted. If at the time they are issued they comply with the Listing Rules, any subsequent conversion in accordance with their terms falls outside of Listing Rules 7.1 and 7.1A.

Section 5.4 of New GN 21 includes the following commentary in relation to determining the maximum number of securities that can be issued under a convertible security:

It is not uncommon, however, for the number of equity securities into which a convertible security may or will convert to be linked to some measure of the market price of the underlying security (such as its VWAP over a specified period) or the value of a foreign currency at or near the date of conversion. In such cases, the inclusion of the market price or foreign currency variable in the conversion formula makes it impossible to determine, at the relevant date, the actual number of underlying securities that will be issued under the terms of the convertible security.

In these cases, ASX will generally¹⁴⁶ calculate the maximum number of underlying securities that can be issued under the terms of a convertible security assuming the security was being converted on the relevant date and applying the conversion formula accordingly.¹⁴⁷

Example 6 in Annexure A of New GN 21 provides as follows in relation to a convertible security where the conversion is tied to the market price of the underlying security and no floor price is specified (**No Floor Convertible Security**):

An entity proposes to issue convertible notes with an aggregate face value of \$10 million. The convertible notes are a new class of security that has not been quoted on ASX. At maturity, the holder can elect to receive the principal of the note in cash or in fully paid ordinary shares. The issue price for the shares is an amount equal to 90% of the VWAP of the ordinary shares on ASX and Chi-X over a 10 trading day window that ends one week prior to the date of conversion. There is no floor price on conversion.

The VWAP of the entity's ordinary shares on ASX and Chi-X for the 10 day period ending one week prior to the proposed date of issue of the convertible notes was 50 cents. Using that value in the conversion formula, the maximum number of ordinary shares into which the notes would convert at the date of issue would therefore be $(\$10,000,000 / (90\% \times \$0.50))$, or 22,222,222 ordinary shares.²⁶²

The entity can issue the convertible notes without security holder approval provided its Listing Rule 7.1 placement capacity at the time is at least 22,222,222 ordinary shares.

Based on the above example, we understand that:

- (a) **at the time of issue of the convertible notes**, the company's placement capacity has diminished by 22,222,222 ordinary shares, notwithstanding that the number of ordinary shares to be issued upon conversion remains unknown and will depend on the market price of the entity's ordinary shares at the date of conversion; and
- (b) **at the time of conversion of the convertible notes**, the ordinary shares issued will not be counted towards the entity's placement capacity by virtue of Exception 9, even if the number of ordinary shares to be issued is more than 22,222,222 due to a decrease in the entity's share price. Accordingly, hypothetically the number of ordinary shares issued upon conversion may exceed the entity's placement capacity.

We consider that it would be helpful if this was clarified in the New GN 21.

In our previous experiences with ASX when considering the terms of a No Floor Convertible Security, ASX has sometimes taken the approach that it would object to a No Floor Convertible Security on the basis that it was not possible to estimate a realistic maximum number of ordinary securities that may be issued for the purpose of Listing Rule 7.1B.1(e), particularly where the listed entity has an unstable share price or where its securities are thinly traded.

Accordingly, based on section 5.4 and Example 6 in Annexure A of New GN 21, it seems that ASX's position regarding No Floor Convertible Securities appears to have changed. If this is the case, we consider that it would be helpful if this was clarified in the New GN 21.

In our view, if ASX were to adopt the approach set out in section 5.4 of New GN 21 in relation to any No Floor Convertible Securities, this could potentially have a significant dilutive impact to security holders in cases where there is a material decrease in the entity's share price between the date of issue of the No Floor Convertible Securities and the date of conversion. ASX should consider whether in these circumstances it would be appropriate to require the imposition of a floor price in the conversion formula so that the maximum dilutive impact can be determined at the outset, particularly in cases where the listed entity has an unstable share price or where its securities are thinly traded.

5.6 GN 24 Acquisitions and Disposals of Substantial Assets Involving Persons in a Position of Influence

We generally agree with the proposed guidance in GN 24. That said, we had one observation to make on ASX's guidance as it relates to supply agreements, especially in relation to those that are of fundamental importance to the entity and entered into with a substantial shareholder.

While we can appreciate the need for ASX to be satisfied that the terms of a standard supply agreement with a 10.1 party reflect arm's length terms, this may be practically difficult to demonstrate in certain cases, particularly where the entity acquires a proprietary product from a substantial shareholder.

We use the following scenario to illustrate the point:

- (a) Company A, an ASX-listed entity, is part of a global group of entities which each hold an exclusive licence to sell, in their respective jurisdictions, a proprietary product owned and produced by Company B, which is a foreign entity;
- (b) the sale of the proprietary product is a key part of Company A's business;
- (c) the entities within the group are separately owned, but Company B has a substantial ownership interest in each entity, including Company A, in order to align the long term commercial relationship between Company B (as licensor) and each entity within the group (as licensee);
- (d) the total consideration payable by Company A under its supply contract with Company B, which is for a period of 10 years, is more than 5% of its net assets; and
- (e) at the expiry of the supply contract, Company A enters into a new supply contract with Company B, on largely similar terms as the previous supply contract.

As the product is proprietary and the terms on which Company B enters into supply contracts with its other licensees is confidential, it will be difficult for Company A to demonstrate that the terms applicable to the arrangement are the same as those that apply to other customers.

This would create a risk that Company A will not be able to continue to operate a key part of its business, should shareholders not approve the resolution under Listing Rule 10.1.

Noting that the underlying intention of the policy is to prevent value-shifting to (among others) a substantial holder, shareholders in Company A will have undoubtedly placed value on the monopoly that Company A has on the sale of the proprietary product in Australia. In addition, as a substantial holder of Company A, Company B is incentivised to balance the interests of Company A against its own commercial interests.

In the above case, while Company A may be unable to demonstrate that the terms of the new supply agreement are the same that apply to other licensees, we would argue that the risk of harm that Listing Rule 10.1 seeks to protect against is appropriately mitigated by the alignment of interests, taking into account that the negotiation of an exclusive licence to sell a popular proprietary product are likely to be favourable to the licensor. To put this another way, the risk of harm to shareholders' of Company A is not materially different to the risk those shareholders (and Company A) would face each time the supply contract was renegotiated if Company B was not a substantial holder in Company B.

Further, the risk to Company A of not receiving the relevant shareholder approval outweighs any risk relating to potential value-shifting to Company B.

Noting ASX's comments in GN 24 that Listing Rule 10.1 "extends to a broader range of 'connected' parties than just related parties and does not include the broad exclusion that Chapter 2E has for transactions on arm's length terms", we would argue that, in the circumstances described above, being able to demonstrate that the supply contract was negotiated on arm's length terms should be sufficient for the purposes of obtaining a waiver from the requirements in Listing Rule 10.1.

In the premises, we suggest that the second paragraph in section 8.3 of GN 24 be amended as follows:

ASX may be prepared to grant a waiver from Listing Rule 10.1 to an entity to allow it to enter into a standard supply agreement with a 10.1 party on condition that the terms applicable to the 10.1 party are the same as those that apply to all other customers, or that the contract is otherwise on arm's length terms.

5.7 GN 25 Issues of Equity Securities to Persons in a Position of Influence

We broadly support new Guidance Note 25 in assisting entities to understand and comply with the framework in Listing Rules 10.11 - 10.16.

Under Guidance Note 25, ASX will only waive the requirement for shareholders to approve an issue of equity securities to a related or 'closely connected' party in exceptional circumstances. To receive a waiver the entity must establish that there is no reasonable prospect of the counterparty, either itself or through its connections to the board or a controlling shareholder, influencing the terms of issue or transaction to favour themselves at the expense of the entity.

The standard is set high, however, we acknowledge the importance of ensuring that the interests of investors and the integrity of ASX are protected and that the market operates on a fully and properly informed basis. We consider these proposed changes are appropriate given the fundamental protections afforded to investors under Listing Rule 10.11.

5.8 GN 33 Removal of Entities from the ASX Official List

Adding to the list of unacceptable reasons why an entity might be asked to be removed from the official list, seeking to avoid disclosure obligations

We are broadly supportive of the proposal to add to the list of unacceptable reasons why an entity might ask to be removed from the official list in section 2.1 of GN 33, seeking to avoid the disclosure obligations an entity would otherwise have under the Listing Rules and sections 674 and 675 of the Corporations Act.

However, the proposed amendment and associated commentary does not provide sufficient clarity on how ASX will form the view that an entity is seeking to delist "solely or primarily" to avoid disclosure obligations. In practice, listed entities and particularly smaller listed entities may form the view that the ongoing compliance costs of being listed on a licensed securities exchange may have become too onerous or burdensome in light of the evolving circumstances of the entity. A factor that may contribute to such a decision may be the compliance costs associated with the ongoing disclosure obligations. It is unclear from the current draft of GN 33 whether such a motivation for delisting may be considered a "sole or primary" purpose of avoiding the disclosure obligations. In light of this, we submit that additional commentary on the factors and/or indicators that ASX may take into account in forming such a view should be provided to allow entities to confidently determine and balance the interests of the entity, its shareholders and ASX in preparing a delisting application.

Automatic removal of entities suspended for an unacceptably long period of time

We are supportive of the proposed amendments to GN 33 in shortening the deadline to provide for the automatic removal from the official list of any entity whose securities have been suspended from quotation for a continuous period of 2 years, with the rider that this period will be shortened to one year if the entity's securities have been suspended from quotation under Listing Rule 17.5 for failure to lodge the financial statements and other documents referred to in that review.

We acknowledge the importance of ensuring that the interests of investors and the integrity of ASX are protected and that the market operates on a fully and properly informed basis. Extensive periods of suspension may increase the risk of value leakage from ongoing administration costs and higher levels of volatility for investors.

We also consider that the proposed time periods are appropriate and should not prove administratively difficult to apply. For entities whose securities have been suspended from quotation under Listing Rule 17.5, we agree with ASX's view that entities that fail to lodge such financial statements or other documents under that Listing Rule for more than a year may be close to insolvency and/or may no longer be suitable to remain on the official list. It can be reasonably expected that listed entities should have capabilities to produce the documents required under Listing Rule 17.5 to a standard and timing mandated by that Listing Rule. For entities whose securities have been suspended from quotation for any other reason, a period of 2 years is reasonably long enough to enable an entity to fully explore opportunities that might lead to the reinstatement of trading in its securities, particularly as there is the ability for this deadline to be extended where the entity can demonstrate that it is in the final stages of implementing a transaction that will lead to the resumption of trading in its securities.

Heightened disclosures about the lodgement of a request by an entity for removal from the official list

We support the heightened disclosure requirements with respect to delisting applications, including the requirement that an entity must disclose whether it will become an "unlisted disclosing entity" under the Corporations Act following its removal from the official list and the ramifications which follow from that.

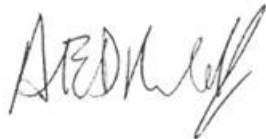
We recognise that these proposed amendments may represent a heightened cost of compliance for entities seeking to delist. However, we consider these costs balanced as against the objective of protecting the interests of investors and improving market disclosure and integrity. Delisting takes away from the investor's ability to trade their securities on a licensed securities exchange. Accordingly, directors and shareholders should be encouraged to consider the longer-term implications and be fully informed in making a decision to proceed with a delisting application.

6. Conclusion

We would note that the views expressed in this letter are those of the partners listed below and do not necessarily represent the views of our clients.

If you have any queries in relation to the above submissions or would like further information, please contact one of the partners listed below.

Yours faithfully



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