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Your reference

Our reference

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AUM/1209164290.1

20 April 2015

By Email Only - regulatorypolicy@asx.com.au

Dear Diane

SUBMISSION ON ASX CONSULTATION PAPER - FACILITATING DUAL LISTINGS BY NEW ZEALAND COMPANIES

1. BACKGROUND AND EXPERIENCE

This submission sets out our comments on ASX Limited's proposal to facilitate the dual listing on the Australian Securities Exchange ("**ASX**") of companies that are listed on the main board of the New Zealand Exchange ("**NZX**") as set out in ASX's Consultation Paper, "*Facilitating Dual Listings by New Zealand Companies, Updating ASX's Foreign Exempt Listing Rules*" dated March 2015 ("**Consultation Paper**").

ASX proposes to make various amendments to the ASX Listing Rules including, amongst other things, the following:

- 1.1 removing the additional eligibility tests for ASX Foreign Exempt Listings in the case of entities that are listed on the main board of NZX (ASX Listing Rule 1.11, Condition 6);
- 1.2 retaining the profits/net tangible assets requirements for ASX Foreign Exempt Listings at their current levels, but to put in place an exception for NZX-listed entities (Listing Rule 1.11, Condition 7);
- 1.3 retaining the spread requirement for ASX Foreign Exempt Listings, but to put in place an exception for NZX-listed entities (Listing Rule 1.11, Condition 8); and
- 1.4 rather than requiring the foreign company to be registered as a foreign company under the *Corporations Act 2001* (Cth), permitting the foreign company to either be registered as a foreign company carrying on business in Australia under the Corporations Act, or to appoint an agent for service of process in Australia (Listing Rule 1.11, Condition 9),

("Proposed Amendments").

DLA Piper (both our Australia and New Zealand offices) regularly acts as legal advisers to dual listed companies including for New Zealand companies with primary listings on the main board of the NZX. This includes acting in connection with the

secondary listing of New Zealand companies on ASX, on subsequent fundraisings in Australia and New Zealand, on compliance with both the ASX and NZX Listing Rules and on corporate governance requirements. Most recently, these companies include:

- 1.5 the a2 Milk Company Limited;
- 1.6 TOWER Limited;
- 1.7 Vista Group International Limited; and
- 1.8 Domino's Pizza Australia New Zealand Limited.

Given this, we feel that we are very well placed to provide these submissions to the ASX on its Consultation Paper. This submission is a joint submission by DLA Piper Australia and DLA Piper New Zealand.

2. SUBMISSION

We fully support the ASX's Proposed Amendments, for the reasons set out below.

2.1 Decrease costs in connection with listing on the ASX

Under the Proposed Amendments, companies listed on the main board of the NZX will now be able to dual list on the ASX as an ASX Foreign Exempt Listing, without having to comply with the more onerous listing requirements for a standard ASX Listing which largely overlap the requirements for a listing on the main board of the NZX.

We are fully in support of this proposal as we believe this will encourage more ASX listings by New Zealand companies seeking the benefits of a broader market for its shares.

2.2 Decrease on-going compliance costs

As a Foreign Exempt Entity, the dual listed entity will have the benefit of substituted compliance which provides that the entity:

- must continue to comply with the NZX Listing Rules (and provide certification of compliance with these requirements); and otherwise
- must comply with only minimal ASX Listing Rule requirements, being:
 - the ASX Listing Rules specified in rule 1.15; and
 - comply with the requirement to immediately release information to ASX that is released to the NZX; and
- will not be required to comply with, or report reasons for not complying with, the ASX Corporate Governance Council's Corporate Governance Principles and Recommendations.

We believe that this will significantly decrease compliance costs that dual listed entities incur in complying with both the NZX and ASX Listing Rules and the corporate governance requirements of each exchange. Our experience with dual listed companies suggests that one of the key concerns for foreign companies listing on ASX is the requirement to comply with two differing sets of laws and regulations.

We consider that the NZX Listing Rules ensure similar compliance, disclosure and corporate governance standards to those of the ASX Listing Rules. Accordingly, we consider that compliance with both sets of Listing Rules may impose an unnecessary burden on these dual listed entities without any substantial benefit to shareholders in these companies or to investors on ASX. In particular, the key principles around matters such as continuous disclosure are effectively mirrored in the two sets of Listing Rules so ensuring that investors on ASX will not be subject to any lower standards of disclosure than is the case currently for dual listed entities.

In our experience, where there are differences between the Listing Rules of the NZX and ASX, these differences are often fairly minor and of a technical nature (and are often meaningless from an investor perspective). For example, we have encountered:

- inconsistent timetabling requirements for rights issues;
- slightly different treatment of options on a reorganisation of capital or entitlement offer;
- minor differences in treatment of buy-backs of unmarketable parcels of shares.

In such cases, our clients have been required to seek waivers on either or both NZX and ASX, because of these differences. This results in additional time, cost and uncertainty of waiver applications, with no real benefit to shareholders, given that the NZX Main Board Listing Rules ensure similar compliance standards to those of ASX.

2.3 Request for additional confirmation to be provided by ASX

We would also like to ensure that ASX provides further clarity on the following matters for existing dual listed companies which are listed on NZX:

- confirming that existing dual listed entities will have the option of moving to a Foreign Exempt Listing so that they will be treated on the same basis under the ASX Listing Rules as new applicants without the requirement for any detailed application process (other than confirming compliance with the NZX listing requirements) or additional listing fees; and
- confirming that a company that does not carry on business in Australia could de-register under the Corporations Act (and instead have a local process agent appointed).

If you have any queries, please do not hesitate to contact us.



Yours sincerely

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