

1 March 2019

Ms Mavis Tan
Manager, Compliance Reporting Education and Research Programme
ASX Limited
20 Bridge Street
Sydney NSW 2000

Email copy: mavis.tan@asx.com.au

Dear Ms Tan,

Submission to the review on ‘Simplifying, clarifying and enhancing the integrity and efficiency of the ASX Listing Rules’

In the interests of the Australian corporate governance framework, Wilson Asset Management makes this submission in response to the Australian Securities Exchange (ASX) public consultation paper, ‘Simplifying, clarifying and enhancing the integrity and efficiency of the ASX listing rules’ (Consultation Paper). For more than 20 years Wilson Asset Management has made a difference for shareholders and the community. As the investment manager for six leading listed investment companies (LICs): WAM Capital, WAM Leaders, WAM Global, WAM Microcap, WAM Research and WAM Active, we are responsible for investing more than \$3 billion in undervalued Australian and international growth companies on behalf of over 80,000 retail investors. Wilson Asset Management is the creator and lead supporter of the Future Generation companies, a passionate advocate for retail investors; and a member of the Pledge 1% movement.

In summary, we make the following recommendations to the ASX in response to the Consultation Paper:

1. Definition of Net Tangible Asset (NTA) backing;
2. Annual report disclosures; and
3. Timing of monthly NTA backing disclosure.

We believe these recommendations serve the interests of all LIC investors, including retail investors, and align with the ASX’s objective to remain an internationally competitive market of quality and integrity.

1. Definition of NTA backing

The ASX has proposed to include explicit references in the definitions of the components of an entity’s NTA backing. We strongly recommend that ASX does not attempt to include these references in the definitions of the Asset, Intangible and Liability components making up the NTA backing, outside of a reference to state that the NTA backing of an LIC should be determined on a basis that is consistent with accounting standards and the entity’s financial statements and accounting policies.

For example, the current drafting proposes to include the following sentence with respect to the definition of “I” Intangible assets: “Example: Intangible assets include capitalised listing expenses”. It is current practice, from our observations, and required by the accounting standards to include listing expenses or “share issue costs” as a deduction from equity (net of any related income tax (AASB 132 Financial Instruments: Presentation para. 37). Therefore, the associated listing expenses are not treated as an “Asset” forming part of the NTA backing and have already been accounted for as a deduction within equity.

There are a number of accounting standards that may determine factors such as “Liabilities” or “Assets” and we do not believe it would be feasible, appropriate, or within the ASX’s scope to redefine such items. If the ASX was to attempt to redefine such items, these definitions may not align with the requirements of recognised accounting standards. As another example, the proposed drafting of the definition “L” requiring liabilities to be determined at fair value conflicts with accounting standards that in some circumstances value liabilities at fair value and in other instances require them to be valued at cost or amortised cost.

2. Annual report disclosures

We welcome the proposed change requiring LICs to disclose the NTA backing of its quoted securities at the beginning and end of the reporting period and an explanation of any change therein over that period (at LR 4.10.20). We believe this is an important measure for all shareholders of LICs to understand over an annual reporting period.

We believe the disclosure of this information in the form of an annual report provides the highest level of corporate governance from the perspective of a Board of Directors, who are the individuals charged with governance over the entity and responsible for reviewing the disclosure document as part of the entity’s annual reporting process, while also providing the opportunity for an independent review from the entity’s auditors to ensure the accuracy of the information presented to shareholders.

We remain concerned, however, that both the existing and proposed listing rules (at LR 4.10.20) require the disclosure of all investments held by an LIC at the end of the reporting period. The reasons for this concern are:

- i. Competitors (in managed funds) do not have the same requirement to disclose all their investment holdings in their annual report, creating an inconsistency and uneven playing field between fund managers by virtue of the chosen corporate structure, to the detriment of their underlying investors;
- ii. In some instances investment holdings may constitute confidential and sensitive information and their public disclosure may not be in the best financial interest of shareholders or other market participants.

The latter can frequently occur where an LIC is building a position in a company and the publication of this holding results in a rise in the share price of the investment that makes it unattractive for the LIC to continue to build their position. The disclosure of short-sold positions or derivatives can also encourage or provide the opportunity for other market participants to take advantage of the visible short-sold or derivative exposure.

Within the current reporting requirements, LICs have three months after the end of their annual reporting period to release their annual report, including the required disclosure of all investments held by the LIC at year end. In its current form, where there is a perceived sensitivity surrounding this level of information, there is an inherent incentive for LICs to disclose this information at the latest possible time (together with the entire annual report). This is inconsistent with the ASX's continuous disclosure obligations, values and intention to have information disclosed to investors in a timely and efficient manner.

3. Timing of monthly NTA backing disclosure

We do not believe that the proposed amendment to include "as soon as available" regarding the release of an LICs NTA backing to be measurable, realistic or a desirable proposal unless it is accompanied with appropriate qualifications. To ensure the accuracy of the financial information presented to shareholders, LICs and their associated service providers undertake the rigorous process of verifying, investigating, cross checking and authorising the NTA backing calculations and associated accompanying information prior to the release of the information to the market.

The Directors and those charged with governance of an LIC have the responsibility to ensure all information that is provided by the entity to shareholders is accurate. Appropriate procedures and quality review processes are therefore put in place by the entities to discharge this responsibility. As a result, it may take a number of days from the time an NTA backing of an LIC is first "available" in the true sense of the word, until the point in time where all authorisations and diligence processes have been completed to the satisfaction of each organisation (both internally for an LIC and externally with their service providers, where applicable).

The NTA backing of each LIC is required to be prepared in accordance with the accounting standards and as a result, the calculation requires a degree of input, diligence and expertise in its preparation in order for it to be accurate and not be considered purely an "estimate".

We believe it would be appropriate to qualify a requirement to release the NTA backing of an LIC "as soon as available" by adding such wording as "subject to the entity having satisfactorily completed appropriate diligence, reviews, verification and authorisation procedures as considered necessary".

To alleviate the ASX's concerns regarding the ability for insider trading in the entities securities by those who know the upcoming NTA backing figure, we believe more consideration should be given to the existing practices, policies, governance and general legal obligations that continue to be imposed on each LIC regarding insider trading. In addition, all listed companies have an obligation to continuously disclose information which may have an effect on its market price or value under its continuous disclosure obligations.

Conclusion and further information

We recognise and support the ASX and its activities in ensuring it remains a market of quality and integrity and continues to be internationally competitive. We believe our recommendations serve these objectives as well as the interests of market participants, particularly investors and listed entities.

Thank you for the opportunity to make this submission. Should you require any further details, I would welcome the opportunity to meet with you to discuss our recommendations.

Yours sincerely,



Jesse Hamilton
Chief Financial Officer
Wilson Asset Management