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1 March 2019

Dear Ms Tan

PUBLIC CONSULTATION

Thank you for the opportunity to provide comments on ASX's Public Consultation Paper "Simplifying, clarifying and enhancing the integrity and efficiency of the ASX listing rules", and the accompanying amendments to the listing rules, guidance notes and forms (**the Proposed Reforms**).

1. BACKGROUND TO AUTOMIC GROUP

The Automic Group, www.automicgroup.com.au, offers a unique combination of Registry, Company Secretarial, Legal and Accounting services specifically to ASX listed companies. At present, approximately 15% of the ASX listed companies utilise one or more of our services.

Our response to the Proposed Reforms is based on our knowledge and representation of these ASX listed companies, as well as our extensive experience and expertise in helping companies successfully list and thereafter operate on ASX.

We hope you find our comments useful, and we would be happy to discuss them with you in further detail.

2 IMPROVING MARKET DISCLOSURES AND OTHER MARKET INTEGRITY MEASURES

2.1 Quarterly reporting

The Automic Group supports the proposed introduction of LR 4.7C.1, LR 4.7C.4 and LR 4.7C.5.In our experience, the majority of the non-mining entities that are required to lodge a quarterly cash flow report pursuant to LR 4.7B already lodge a report on their quarterly activities. We believe formalising this already widespread commercial practice will improve market disclosure.

However, the Automic Group does not support the proposed LR 4.7C.2 and LR 4.7C.3. Currently, the *Corporations Act 2001* (Cth) (**Corporations Act**) operates to ensure that any statements made in a prospectus, PDS or information memorandum (**Offer Document**) issued by an entity must not be misleading or deceptive and must (with respect to forecast or forward looking statements) have a reasonable basis for making the statement at the time the relevant statement is made. We are concerned that a reporting obligation whereby companies are required to compare those statements made previously in capital raising documentation to the actual expenditure would be problematic for the following reasons:

(a) often the entities subject to LR 4.7B have little or no revenue. As such, these companies often have limited cash resources with which to implement their business plan and objectives. If a company is required to report against its Offer Document, we are concerned it will act as an impediment for a company to pivot and change its business model or operations, thereby potentially curtailing commercial rationalism, change and entrepreneurial activities. We are concerned that companies and their Boards will continue to expend funds to comply with "Use of Funds" statements in Offer Documents as opposed to expending funds in the best interest of shareholders;

(b) it increases the potential exposure for directors and Boards to litigation in relation to their previously lodged Offer Documents for making business decisions which may be in the best interest of the Company; and

(c) it places a further administrative burden on what are usually small and under resourced companies.

For the reasons listed above the Automic Group also does not support the proposed changes to LR 5.3.4 and LR 5.4.4 in relation to the reporting of use of funds against "Offer Documents".

In terms of other matters which should be required for quarterly reports, we note that, at present, the ASX requires the inclusion of estimated cash outflows for next quarter under Item 9 of the Appendix 4C. We have some concerns around this requirement. Item 9 is a misleading representation of the cash burn of a company as it only includes forecast outflows and not anticipated inflows for the next quarter. Cash receipts are obviously an integral component of the future cash available to an entity. The ASX do not require entities to release forecast inflows, noting that any forecast of revenues would be subject to ASIC guidance and the general law regarding forward looking statements. That said, as noted above, forecast inflows are required to gain a complete understanding of the company's expected future cash position. Further, where are company has a "cost of goods sold" component to their services, revenue can be estimated by readers by applying the usual margin.

We are sympathetic to the ASX's intention to provide readers with a view on the future cash burn of the entity, but we are of the view that the current requirement of forecasting operating expenses is of limited use in this regard.

Our suggestion is for ASX to remove Item 9 from Appendix 4C in its current form and replace it with the table as follows:

9.	Estimated Future Cash Position	Current Quarter $A'000
9.1	Net cash from / (used in) operating activities (Item 1.9)	
9.2	Cash and cash equivalents at end of quarter (Item 4.6)	
9.3	Unused finance facilities available at quarter end (Item 8)	
9.4	Total available funding (Item 9.2 + Item 9.3)	
9.5	Estimated quarters of funding available (Item 9.4 divided by Item 9.1)	

9.6 If Item 9.5 is less than 2 quarters, please provide an explanation of the following items in the commentary to the Appendix 4C:

1. Does the entity expect that it will continue to have negative operating cash flows for the time being and, if not, why not?
2. Has the entity taken further steps, or does it propose to take any steps, to raise further cash to fund its operations and, if so, what are those steps and how likely does it believe that they will be successful?
3. Does the entity expect to be able to continue its operations and to meet its obligations on the basis of information disclosed in Item 9.6 (2) above?

2.2 Disclosure by listed investment entities of their NTA backing

The Automic Group supports these proposed changes, however raises the following comment for consideration. In relation to amending LR 4.12 to disclosing monthly NTA backing "as soon as that information is available", the over-riding principle should remain that the entity must be in compliance with its continuous disclosure obligations and therefore, the entity should, make the disclosure at the earlier of 14 days after the month end or when the entity becomes aware of the information.

2.3 Disclosure of closing dates for the receipt of director nominations

The Automic Group supports this proposed change.

2.4 Disclosure of voting results at meetings of security holders

The Automic Group supports this proposed amendment.

2.5 Disclosure of underwriting agreements

The Automic Group supports this proposed change and believes that the change reflects good governance and has been market practice for some time.

2.6 Good fame and character

The Automic Group supports this proposed change and agrees that if an entity's CEO or proposed CEO is not of 'good fame and character' then they are not appropriate to manage an ASX listed entity and should not be permitted to do so.

2.7 Persons responsible for communication with ASX on listing rule issues

As an organisation which regularly conducts in-house training, generally the Automic Group welcomes the proposed changes to LR 1.1, Condition 13.

However, we urge a practical approach be taken to the application of the rule. We suggest that appropriately qualified individuals or individuals who have a sufficient level of experience should be exempt from this requirement. Examples of classes of individuals which should be allowed to be exempt are: qualified lawyers and accountants who can demonstrate no less than 10 years' experience with the ASX Listing Rules, graduates of appropriate courses from the Governance Institute of Australia or the Australian Institute of Company Directors.

In addition to the above, we suggest reducing the administrative burden on individuals who have achieved the qualification. We would suggest that if an individual has either achieved an exemption, or has passed the applicable test then they should not be required to re-qualify for a period of time (e.g. two years). Furthermore, any individual who has passed the applicable test should not have to pass the same test for a different entity, provided the individual has a valid (ie. within the suggested two year) compliance period. We would suggest that ASX keep a register of those approved and qualified, and not require requalification for every new listing if the individual is already approved and has demonstrated that to ASX.

2.8 Voting by employee incentive schemes

The Automic Group supports this proposed change. The outcome of a shareholder's vote should be determined by the shareholders who are the legal or beneficial owners of the securities entitled to vote. The Automic Group agrees that the practice whereby Boards of companies use the votes attached to unallocated securities to assist in determining (and in some cases determining definitively) the outcome of a resolution to be contrary to the spirit of the Listing Rules, the Corporations Act, and best practice corporate governance and thus unethical.

2.9 Market announcements

The Automic Group supports this proposed change as it will be easier for shareholders to contact companies directly in relation to the announcements that have been lodged.

2.10 Distribution schedules

This is useful information for shareholders and the Automic Group supports this change.

3 MAKING THE RULES SIMPLER AND EASIER TO FOLLOW

3.1 Announcing issues of securities and seeking their quotation

As an innovative technology company, the Automic Group is broadly supportive of the initiative to adopt "smart forms" for both the Appendix 2A and Appendix 3B. In practice it will be imperative to ensure that the internal ASX systems duplicate the relevant information accurately and completely across both forms to ensure accuracy. The Automic Group welcomes the opportunity to develop and customise our technology to link directly with the ASX "smart forms".

In relation to the form and content of the Appendix 3B "smart form", our specific comments are as follows:

(a) we note that it would be advisable, if not already done so, for the Appendix 3B to allow for multiple and different types of issues to be captured under the one Appendix 3B; and

(b) we note that for a proposed issue of securities for a placement or other type of issue, there is a requirement to publicly name the subscribers of the securities, where there are 10 or fewer subscribers. We query whether this is necessary in circumstances where the proposed issue is not material and/or the proposed subscribers will not be substantial shareholders of the company, and it may be more appropriate to qualify the requirement based on a materiality threshold.

3.2 Working capital

The Automic Group supports the proposed change.

3.3 Chess Depositary Interests

The Automic Group supports this proposed change.

3.4 The additional 10% placement capacity in rule 7.1A

The Automic Group supports the deletion of LR 3.10.5A(a), the extension of the period in LR 7.1A.3(b) and the inclusion of the information required under LR 3.10.5A (b)-(d) in the new 'smart form' as this should lessen the administrative burden for companies utilising LR 7.1A.

Currently, the notice of meeting requirements for shareholder approval of the additional 7.1A 10% placement capacity are inconsistent between the initial approval, where no information is required on securities issued in the prior 12 months, and a renewal of the additional 7.1A 10% placement capacity, where details are required on all securities issued in the prior 12 months, irrespective of whether the 7.1A capacity was utilised or not. We suggest the disclosures required in a shareholder meeting for any 7.1A approval should simply require the disclosure of any prior use of 7.1A placement capacity in the prior 12 months (rather than the current requirement of all security issues, irrespective of whether 7.1A was used in those issues or not) or, where no 7.1A placement capacity was used in the prior 12 months, even if shareholder approval had been previously granted, a statement to the effect that "no securities were issued in the prior 12 months under ASX LR7.1A".

3.5 Issues of equity securities without security holder approval

Generally, the Automic Group supports these changes. In relation to the proposed change to LR 7.2, Exception 3, regarding the allocation policy a concern may arise if the Directors do not know the proposed allottees. However, if the phrase "at the discretion of the directors is intended to cover this scenario and is an acceptable allocation policy for the ASX, then practically this change will not cause undue problems.

3.6 Notices of Meeting

Generally, the Automic Group supports these changes.

However, we do not support the proposed change to LR 7.3A.4[33] to give effect to ASX's decision to remove the capacity for entities to issue securities for non-cash consideration. In small to mid-cap ASX listed entities this provision is often utilised so that acquisitions and capital raisings can be undertaken simultaneously. Removing this ability within the Listing Rules will cause greater inefficiency for small to mid-cap entities.

The Automic Group agrees that the current ability for entities to make an issue under LR 7.1A for non-cash consideration is extremely restrictive. The Automic Group considers that the fact that this ability is seldom used should not be seen as a reflection of the merits of the ability, as entities frequently utilise its LR 7.1 capacity to make appropriate acquisitions and investments. The additional 10% would be useful, but for the unnecessarily burdensome nature of the current compliance regime, which should be eased, instead of being removed altogether. Accordingly, the Automic Group is not supportive of this change.

3.7 Employee incentive schemes

Generally, the Automic Group supports these changes and specifically the Automic Group supports the inclusion of the new requirement in LR 10.15.3 that the relevant director's current total remuneration package is disclosed in the relevant meeting notice. We believe this will bring greater transparency and greater understanding of a director's overall remuneration. However, care must be taken in the interpretation of this rule (by ASX) to ensure that a director's total remuneration includes any, 'special exertion fees' or 'consultancy fees' which are paid or payable, in cash or shares on an ad hoc basis or via a consultancy agreement to a director or related (to the director) entity, in order to present the full remuneration package to shareholders. We do not believe this requirement will be unduly burdensome as this information is compiled in the remuneration report contained within the audited financial statements.

3.8 Voting exclusions

The Automic Group supports these changes as greater consistency and certainty across voting exclusions will allow votes to be applied with greater integrity at all meetings. In particular, the Automic Group supports the narrowing of the voting exclusions for LR 11.1 and LR 11.2 and the new guidance offered in GN 12 as it will allow the voting exclusions to be interpreted and applied by entities with greater precision.

4 EFFICIENCY MEASURES

4.1 Escrow

The Automic Group supports these changes and welcomes them. As an organisation that conducts up to 30 new listings every year, the administrative burden and cost for our clients is considerable in complying

with the current escrow regime. Therefore, this initiative to reduce the administration involved in an IPO, streamlining the process and making it more efficient, is welcomed.

4.2 Notification by profit test entities of continuing profits

The Automic Group supports this proposed change.

4.3 Agreements for admission and quotation

The Automic Group supports these changes and welcomes them. We look forward to collaborating directly with ASX to integrate our Registry and CoSec technology, CoSecPro, with the new "smart forms".

4.4 Eliminating the need to apply for a number of standard waivers

The Automic Group supports these changes. As an organisation which routinely prepares and obtains standard waivers on behalf of its clients, these changes will eradicate the inefficiency and administrative burden currently associated with procuring standard waivers.

4.5 Standard forms

The Automic Group supports these changes and welcomes them. Welook forward to collaborating directly with ASX to integrate our Registry and CoSec technology, CoSecPro, with the new "smart forms". Given the importance and widespread use of the Appendices (and the amount of work that is required at times to complete the forms), it may be more appropriate to provide sufficient notice to ASIC and the market for these forms to be amended or replaced in the future.

5 UPDATING THE TIMETABLES FOR CORPORATE ACTIONS

The Automic Group is comfortable it can comply with these timetables for its clients and supports the proposed changes.

6 MONITORING AND ENFORCING COMPLIANCE WITH THE LISTING RULES

As an organisation at the forefront of corporate compliance and corporate governance, the Automic Group supports any reforms designed to improve the integrity, efficiency and operation of the market. As participants in this area, we request that any decisions made by the ASX, which ultimately may be subject to ASX discretion, are applied consistently so that service providers and advisers can advise their clients on a consistent basis.

7 CORRECTING GAPS OR ERRORS IN THE LISTING RULES

The Automic Group supports these changes. In particular, the proposed changes to LR 7.4 and LR 7.5 are very helpful for emerging companies as it will allow the companies to maintain flexibility to conduct future issue of securities.

8 GENERAL DRAFTING IMPROVEMENTS

The Automic Group supports these changes.

9 NEW AND AMENDED GUIDANCE

Broadly, the Automic Group supports these changes and the new Guidance Notes and makes specific comments on the following:

(a) **GN 1 (Section 3.3)**

ASX should provide feedback on pathfinder prospectuses, as well as formally lodged documents. This will ensure that any concerns ASX may have can be addressed before the prospectus is formally lodged and is consistent with the other amendments made by ASX in section 3.3 of GN 1. In particular, ASX makes it clear that its review of the prospectus is independent to ASIC's review of the prospectus – and that ASX will not accept an argument that ASIC has not raised any objections to the prospectus. If ASX maintains this position, ASX should provide feedback on pathfinder prospectuses (similar to formally lodged documents) and we would strongly recommend that GN1 be amended to provide for this. In addition, when submitting executed escrow agreements, the GN should clearly state whether or not the ASX will accept electronically signed copies of restriction agreements. Often, when coordinating an international listing it is difficult to obtain original signed escrow documentation in a timely manner and as such clarity in this regard is required.

(b) **GN 1 (Section 3.7)**

We consider that if ASX is to maintain its position that the definition of "associate" is to include a provision deeming a related party of a natural person to be their associate unless the contrary is proven, additional guidance is required on the types of evidence that ASX may accept to establish that the other person is not associated. This will assist in ensuring that clear guidance can be given to companies looking to list in calculating the free float.

(c) **GN 1 (Sections 4.3) and GN 11 (Sections 2.2 and 10.3)**

We request greater clarity be provided in GN 1 and GN 11. How does the ASX propose to differentiate and determine the difference between an issue to friends, family (etc) which may confer a benefit on those recipients, as opposed to a genuine seed capital raising to fund a company in need of working capital? More guidance is respectfully requested on how the ASX will exercise its discretion. In our experience, those parties which invest 'pre-IPO' are taking significant risk in that the IPO may not occur in a timely manner or at all. Hence, these securities are issued at a discount and are subject to cash formula relief escrow. If there is a move to classify more of these investors as 'promoters', we are concerned that there will be deleterious effect on the ability for companies looking to list to raise seed capital, having an overall detrimental effect on the ability of small cap companies to raise equity capital.

(d) **GN 12 (Section 3.4)**

Market practice on pre-emptive capital raisings is that the entity is usually permitted by ASX to raise up to $500,000 (should the entity not have sufficient working capital already) to allow it to meet the costs of undertaking a backdoor listing.

Is this practice to be allowed to continue? Can the Guidance Note be expanded to provide guidance on the circumstances when this will be allowed to occur?

(e) **GN 21 (Section 7.4)**

Footnote 203 suggests that, for the purposes of LR 7.5.1, in the case of a placement to 10 or fewer persons the ASX would generally expect the entity to name those persons in the notice of meeting rather than describe the basis on which they were identified or selected. We believe that the selection of 10 persons as the suggested cut-off is an arbitrary number with no factual basis. We submit that the market does not need to be informed on individual investors when a placement for say $1 million is made to 11 people. We submit that the market does need to be informed on individual investors when the same $1 million placement is made to one less person. The cut-off of 10 may also encourage some deliberate non-compliance or circumvention to artificially achieve 11 investors. Our view is that it would be more useful for the market to understand whether a placement resulted in a change in the Top 20 shareholders of the company at the time of the placement. With that in mind, our suggestion for the naming of individual investors in a placement is whether, as a result of the placement, that shareholder was already in, or entered, the Top 20 shareholder list. Words to the following effect would suffice in this regard: "The investors outlined below, who participated in the placement, were in the Top 20 shareholders of the Company immediately following the placement":

Name of Investor	**Amount invested in Placement ($)**
Investor A	$xxxx
Investor B	$xxxx
Others – outside of Top 20 immediately following the Placement	$xxxx
Total of Placement	$xxxx

The Automic Group welcomes the opportunity to work with and engage with ASX further in relation to these proposed changes. Please let us know if you have any questions or would like to discuss our response.

Yours faithfully
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