HopgoodGanim

LAWYERS

1 March 2019

Ms Mavis Tan
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By email: mavis.tan@asx.com.au

PERTH

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Dear Ms Tan

Submission to ASX Limited

We **attach** a submission from HopgoodGanim Lawyers on the Consultation Paper *Simplifying, clarifying and enhancing the integrity and efficiency of the ASX Listing Rules* released by ASX Limited for comment on 28 November 2018.

Thank you for considering the comments and observations we raise within our submission.

Yours faithfully

HopgoodGanim

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ASX Public Consultation Package
HopgoodGanim Lawyers Submissions

1. Improving market disclosures and other market integrity measures

1.1 **Feedback on the proposed changes to the quarterly reporting regime**

- Do stakeholders support the concept of requiring LR 4.7B quarterly reporters to lodge quarterly activities reports?
- Are the proposed informational requirements for quarterly activity reports in the new LR 4.7C and in the amendments to LR 5.3 and 5.4 appropriate, in terms of their reach and content?
- Are there any other matters that should be required to be included in quarterly activities reports?

Refer to paragraph 2.1 of the Consultation Paper.

The changes to the quarterly reporting regime require LR 4.7B entities (i.e. start up entities) to lodge quarterly activities reports for release to the market. The reports must detail their business activities for the quarter including material developments or changes, summary of expenditure, comparisons between actual expenditure and estimated expenditure, explanations for third party payments. These changes are specified in the new LR 4.7C.

In order to ensure that quarterly reporting requirements are consistent across entities, the ASX are also proposing to adjust LR 5.3 and 5.4 concerning quarterly reporting by mining exploration and oil and gas exploration entities. In addition to their existing obligations, these exploration entities will also need to disclose details of the mining tenements held at the end of the quarter and their location, farm-in or farm-out agreements it entered into during the quarter, comparisons between actual and estimated use of funds statements, explanations for expenditure which is materially different from estimates where applicable, and disclosure regarding payments to related parties.

HopgoodGanim Lawyers Comment: The proposed information requirements in new LR 4.7C regarding the details of business activities, material developments or material changes and summary of expenditure are appropriate. Clarity could be given as to whether material changes arising from all 'use of funds' statements for secondary capital raisings require disclosure.

The changes to LR 5.3 and 5.4 are also appropriate. However, we note that there may be circumstances where disclosures pursuant to LR 5.3.6 or 5.4.6 (explanations of material differences between actual expenditure and estimated cash outflows) may already have been made to the market as part of a listed entity's ongoing disclosure obligations. Accordingly, we suggest that ASX consider allowing listed entities to refer to previous announcements where applicable.

1.2 **Feedback on the proposed changes to the reporting requirements for LIC's and LIT's**

- Are the reporting requirements for LICs and LITs appropriate in terms of their reach and content?
- What are the unintended consequences if the new requirements are adopted, if any?
- Are there any matters that LICs and LITs should be required to report to the market on a periodic basis?

Refer to paragraph 2.3 of the Consultation Paper.

The amendments to the disclosures by LICs and LITs include:

- amending the definition of "net tangible asset backing" in LR 19.12 for clarification;
- amending LR 4.10.20 requiring further disclosures from a LIC or LIT its annual report;
- amending LR 4.12 such that monthly NTA backing must be disclosed as soon as it is available; and
- amending LR 17.5 such that an automatic suspension occurs if a monthly statement of NTA backing is not lodged with the ASX on time.

The primary change is the requirement for LICs and LITs to disclose

	in their quarterly report their NTA backing and provide an explanation for variances during the period. **HopgoodGanim Lawyers Comment:** We disagree with the new requirement in subrule (c) of LR 4.10.20 which requires the investment entity to disclose the NTA of its quoted securities at the beginning and end of the reporting period and provide an explanation of changes over that period. We disagree with this amendment on the basis that security holders may gather this information from the monthly disclosures made by LIC and LIT entities under LR 4.12.
1.3 **Feedback on the proposed changes to rule 3.13.1** • Do stakeholders agree that listed entities should disclose the closing date for the receipt of director nominations to the market? • Will the requirement to disclose the closing date for the receipt of director nominations to the market be burdensome to comply with? • What could be the unintended consequences of implementing these changes, if any? Refer to paragraph 2.4 of the Consultation Paper.	LR 3.13.1 currently requires, if directors may be elected at a meeting of security holders, that the relevant entity tell ASX the date of a meeting at least 5 business days before the closing date for the receipt of nominations. However, there is no requirement to actually note the closing date for nominations. The proposed changes to LR 3.13.1 will require an entity to tell ASX both the date of the meeting and the closing date for the receipt of nominations from persons wishing to be considered for election as a director. Further, the proposed amendments also clarify that failure to give such notice does not invalidate the meeting or the election of any directors. **HopgoodGanim Lawyers Comment**: We agree that listed entities should disclose the closing date for the receipt of director nominations to the market. We do not view this requirement as overly burdensome. However, we do query whether there may be unintended consequences of implementing this change in that a listed entity may assume the date of the meeting (so as to satisfy LR 3.13.1 and announce the same in advance of settling and announcing the final notice of meeting including the then 'firm' date) having regard to underlying assumptions as to necessary ASX review periods and print/despatch timetables which then ultimately change. An alternate for consideration is to delete this rule entirely in that the Constitution and Corporations Act adequately provides a regime for nomination of directors.
1.4 **Feedback on the proposed changes to rule 3.13.2 regarding the disclosure of voting results at meetings of security holders** • Are the proposed changes to rule 3.13.2 appropriate in terms of their reach and content? • Will the proposed changes to rule 3.13.2 be burdensome to comply with? • Might there be any unintended consequences if changes to rule 3.13.2 are adopted? Refer to paragraphs 2.4 and 2.5 of the Consultation Paper.	LR 3.13.2 currently requires an entity to tell ASX the outcome of each resolution put to a meeting of security holders. This must be done immediately after the meeting is held, however there is no further guidance on what information must be provided by the entity. The proposed changes to LR 3.13.2 require specific information regarding the vote on each resolution and associated proxy information to be provided. Further, the entity must advise if a resolution results in a first or second strike against their remuneration report and, if a resolution was proposed but not put to the meeting, a description of the resolution and an explanation as to why it was not put to the meeting. **HopgoodGanim Lawyers Comment**: We suggest that it may be

helpful for ASX to provide a template or example table in a format they would like to see the voting results presented to aid companies in complying with the next standardised voting result disclosure requirement.

We note the requirement in the proposed new LR 3.13.2(a) to provide a short description of the resolution and suggest that, as shareholders will have available to them the notice of meeting (containing a detailed description of the resolutions), ASX be open to this required short description being very succinct, serving only as a reminder of the resolution's contents.

With the above restriction in mind, we do not consider the proposed changes to LR 3.13.2 as being burdensome to comply with, and see no unintended consequences if these changes are adopted.

1.5 **Feedback on the proposed changes to the disclosures required in relation to underwriting arrangements**

- Are the proposed changes appropriate, in terms of their reach and content?
- Will the proposed changes be burdensome to comply with?

Refer to paragraph 2.6 of the Consultation Paper.

Dividend Reinvestment Plan Disclosures

ASX proposes to promote LR 7.2 exception 7 (issues under a dividend reinvestment plan (**DRP**)) to LR 7.2 exception 4. This will extend the exception to an underwriter of a DRP, provided certain key information about the underwriting agreement has been disclosed. Details of the underwriting agreement must be dislcosed prior to the date of payment for the dividend or distribution in accordance with LR 3.10.9 (e.g. name of underwriter, extent of the underwriting, fee or commission payable, summary of material circumstances where the underwriter has the right to aviod or change its obligations) and the entity must make the issue within 15 business days after the payment is made.

HopgoodGanim Lawyers Comment: Much of this information is often included in disclosure materials that ASIC states should be included in prospectuses (RG 128). However, a DRP underwriting does not necessarily require prospectus level disclosure and HG remains concerned of the possibility that this increased disclosure requirement may result in commercially sensitive information being released to the market.

ASX proposes to amend LR 7.2 exception 12 (issues to an underwriter of the exercise of options) to become LR 7.2 exception 10 to address the fact that it currently only applies to an issue of securities to the underwriter. Typically in an underwriting, if there is a shortfall, some or all of it will be allocated and issued at the direction of the underwriter to the sub-underwriters and other parties who have agreed to take firm allocations rather than be issued to the underwriter and this exception will be amended to reflect this.

HopgoodGanim Lawyers Comment: No comment.

ASX proposes to extend the 10 business day deadline for such issues to 15 business days, to align with LR 7.2 exception 2.

HopgoodGanim Lawyers Comment: No comment.

ASX proposes that in order to be consistent with new LR 7.2 exception 9, to extend this exception to cover underwritings of options issued before an entity was listed, provided this existence and material terms of the options were disclosed in the propspectus, PDS or information memorandum lodged with ASX under LR 1.1 condiion 3.

HopgoodGanim Lawyers Comment: No comment.

1.6 **Feedback on the proposed educational requirements for persons appointed on or after 1 July 2010 to be responsible for communication with ASX on listing rules**

- Do stakeholders support the concept of having educational requirements for such persons?
- What concerns do stakeholders have about the proposal?
- Do stakeholders have a view on the scope and content of what should be covered in the approved education course?

Refer to paragraph 2.8 of the Consultation Paper.

Feedback on extending the "good fame and character" requirements to CEO's and proposed CEO's

Educational Requirements

ASX is proposing to improve listing rule compliance by requiring the persons appointed by listed entities to be responsible for communciation with ASX on listing rule issues to have demonstrated an adequate level of knowledge of the listing rules. This involves:

- adding a definition of approved listing rule compliance course; in LR 19.12;
- amending LR 1.1 condition 13 to require an applicant seeking an ASX Listing to have appointed as the person responsible for communication with ASX in relation to listing rule matters someone who has completed an approved listing rule compliance course and attained a satisfactory pass mark. This requirement is to come into effect for entities admitted to the official list on or after 1 July 2019; and
- amending LR 12.6 likewise.

We understand ASX intends to make an approved education course and examination available on line on the ASX website free of charge (multiple choice). ASX has also stated that it is considering accrediting courses offered by other institutions, e.g. Governance Institute Australia given that this requirement is to apply to those persons appointed to the relevant position from 1 July 2019.

HopgoodGanim Lawyers Comment: We query whether certain persons responsible who also have professional qualifications (such as certified practising accountants, lawyers and potentially others) who also are familiar with the ASX Listing Rules may be exempt from undertaking the proposed course and examination.

HG also queries whether the requirement should extend to directors of newly listed entities as well as the person responsible for communicating with the ASX in relation to matter associated with the ASX listing rules.

We also suggest clarification ought be given as to whether there will be any increased liability incurred on the person responsible as a result of this proposed change (having regard also to warranties in Listing Application).

Good Fame & Character Requirement

ASX proposes to expand the "good fame and character"

	requirement in the conditions for admission as an ASX Listing (rule 1.1 condition 20) to cover an entity's CEO or proposed CEO as well as its directors and proposed directors. **HopgoodGanim Lawyers Comment:** No comment .
1.7 **Feedback on the proposed voting restrictions in new rule 14.10 for securities held by or for an employee incentive scheme** • Are the proposed changes appropriate in terms of their reach and content? • Will the proposed changes be burdensome to comply with? • Might there be any unintended consequences if the proposed changes are adopted? Refer to paragraphs 2.9 and 7.2 of the Consultation Paper.	The new LR 14.10 provides that if securities are held by or for an employee incentive scheme are being held for a nominated participant, the nominated participant is not excluded from voting on the resolution, and they have directed how the securities are to be voted. **HopgoodGanim Lawyers Comment:** We do not consider that the proposed changes in new LR 14.10 will be burdensome to comply with (save that from an administrative perspective, notice will need to be given to underlying beneficial nominated participants and written 'direction' will need to be collected by the company). There are also proposed amendments to LR 2.8 to address the fact that the circumstances listed specifying the timing for receipt of an application for quotation is incomplete. The ASX is proposing to amend the conclusion of LR 2.8 such that where there is an employee incentive scheme with frequent issues of securities, companies may apply for quotation of such securities to be made periodically rather than at the time they are issued. The change will still require companies to notify the market by way of announcement or letter that the securities have been issued within 5 days in line with LR 3.10.3A, but quotation may occur less frequently. **HopgoodGanim Lawyers Comment:** No comment.
1.8 **General comments** on: • Market announcements; and • Distribution schedules. Refer to paragraphs 2.10 and 2.11 of the Consultation Paper.	Market announcements ASX proposes amendments to LR 15.5 adding the requirement that a document for market release should include a covering letter including the name, title and contact details of a person whom security holders can contact. **HopgoodGanim Lawyers Comment:** No comment. Distribution schedules ASX currently obtains this information via an attachment to Appendix 3B an entity lodges in connection with its application for quotation of the securities in question. **HopgoodGanim Lawyers Comment**: No comment.

2. Making the rules simpler and easier to follow

2.1 **General comments** on:

- Announcing issues of securities and seeking their quotation;
- Working capital;
- Chess depository interests; and
- The additional 10% placement capacity rule in 7.1A.

Refer to paragraphs 3.1 to 3.4 of the Consultation Paper.

Announcing issues of securities and seeking quotation

ASX is suggesting changes to simplify and rationalise the current process for announcing issues of securities and applying for their quotation. The changes include amendments to Appendix 3B and the creation of a new Appendix 2A such that appendix 3B forms will only be used for the notification of a proposed issue and an Appendix 2A will be used to apply for the quotation of securities.

HopgoodGanim Lawyers Comment: Refer to comments below at section 9.1.

Working Capital

HopgoodGanim Lawyers Comment: In relation to the proposed changes to LR 1.3.3 and the inclusion of a definition of "working capital" in LR 19.12, while we concur with ASX's intention to pursue a simpler approach in determining the amount of working capital, we do not support the proposed removal of provisions permitting an entity to include in its working capital calculations budgeted first year revenue/administration costs. This proposed change will make it more difficult for entities to meet the working capital requirement, particularly smaller entities.

Chess depository interests

ASX are introducing a new rule 4.11 requiring entities that have CDIs issued over their quoted securities to notify ASX of the number of CDIs on issue on a monthly basis by way of a new Appendix 4A.

HopgoodGanim Lawyers Comment: Refer to comments below at section 9.1.

10% placement capacity

ASX has amended the calculation under LR 7.1A such that variable "E" in the calculation now refers to the number of equity securities issued or agreed to be issued under LR 7.1A.2 in the relevant period where the issue or agreement has not been subsequently approved by the holders or ordinary securities under rule 7.4.

HopgoodGanim Lawyers Comment: We have no comments on the proposed changes to rule 7.1A set out in section 3.4 of the Consultation Paper.

2.2 **General Comments** on Issues of equity securities without security holder approval.

Refer to paragraph 3.5 of the Consultation Paper.

ASX proposes to rationalise the lists of equity issues that can be made without security holder approval under LR 7.2, 7.6, 7.9 and 10.12 and making them consistent. This includes the amendments set out below.

Deleting the existing LR 7.1B.2 (which deals with agremeent to issue securities that are conditional on security holder approval) and replacing it with a specific and corresponding exception in LR 7.2 for agreements to issue equity securities that are conditional on holders of ordinary securities approving the issue under LR 7.1 before the issue is made. In ASX's opinion, this will align with the drafting of the exceptions in LR 7.2 and 10.12.

HopgoodGanim Lawyers Comment: No comment.

ASX proposes to amend LR 7.2 exception 14 (issues made with security holder approval under LR 10.11 or 10.14) to remove the requirement that the notice of meeting approving an issue to a releated party must state that if approval is given under LR 10.11 or 10.14, approval is not required under LR 7.1. This requirement is often overlooked by listed entities and ASX does not consider it necessary. In ASX's opinion, this exception should have this effect without the notice of meeting needing to state it.

HopgoodGanim Lawyers Comment: No comment.

ASX proposes to introduce into LR 7.2 a new exception 15 equivalent to existing LR 10.12 exception 4A.14. This would exclude from the restrictions in LR 7.1 and 7.1A a grant of options or other rights to aquire securities under an employee incentive scheme, where the securities to be aquired on the exercise of the options or in satisfaction of the rights are required by the terms of the scheme are to be purchased on market. These issues are proposed to be exlcuded from LR 7.1 and 7.1A on the basis that because the securities to be aquired on the exercise of the options or in satisfaction of the rigths must be purchased on- market, there is no dilution to existing security holders.

HopgoodGanim Lawyers Comment: No comment.

ASX proposes to introduce into LR 7.2 a new exception 17 equivalent to the exception in existing LR 10.12 exception 10 (to become LR 10.12 exception 11) for agremeents conditional on security holder approval. To prevent such an agreeemnt being prematurely counted in Variable A, ASX is proposing to exclude issues under the new exception from the first bullet point in the definition of that variable but to include a note in the fourth bullet point to indicate that the reference in that bullet point to fully paid ordinary securities issued under an agreement to issue securities within LR 7.2 exception 17 where the issue is subsequently approved under LR 7.1.

HopgoodGanim Lawyers Comment: No comment.

ASX proposes to amend LR 7.6 (no equity securities to be issued without approval before a meeting to appoint or remove directors or repsonsible entity) to include equivalent exceptions to thse in LR 7.9 (no equity securities to be issued for 3 months after written notice of a takeover.

HopgoodGanim Lawyers Comment: No comment.

ASX proposes to add to LR 7.9 new exceptions 7 (an issue made after the entity is told in writing that take over offeror is no longer making, or proposing to make, a takeover offer for the entity's securities) and 8 (an issue made with the approval of the takeover offeror.

HopgoodGanim Lawyers Comment: No comment.

ASX proposes to amend LR 10.12 exception 1 (pro-rata issues) to extend it to issues made to the holders of other securities that are entitled under the terms of issue to participate in a pro-rata issue to holders of ordinary securities. This will align the exception with LR 7.2 exception 1.

HopgoodGanim Lawyers Comment: No comment.

ASX proposes to expand LR 10.12 exception 2 (issues to an underwriter of a pro-rata issue) so that, consistent with exception 1, the underwriting can also relate to other securities that are entitled under their terms of issue to participate in a pro-rata issue to holders of ordinary securities and adding a requirement that certain key features of the underwriting agremeent must be disclosed in the Appendix 3B filed in relation to the issue under LR 3.10.3. In ASX's opinion, this will align the exception with the changes proposed to LR 7.2 exception 2 above. We do note though that LR 7.2 exception 2 relates to an issue "under an underwriting agreement" - ie not "to the underwriter" - where as LR10.12 exception 2 relates to an issue "to the underwriter" (which includes a sub-underwriter).

HopgoodGanim Lawyers Comment: We do not think this is problematic as it simply means that a related party will need to either underwrite or sub-underwrite in order for the exception to apply. If the issue is to an unrelated party under an underwriting agreement (even if the underwriting agreement is with a related party), LR 7.2 execption 2 would apply. The two exceptions do not "align" as per ASX's comments, however we do not think this is an issue.

ASX proposes to amend LR 10.12 exception 3 (issues under a DRP) to make it clear that it does not apply to an issue of securities to, or at the direction of, an underwriter of a DRP.

HopgoodGanim Lawyers Comment: No comment.

ASX proposes to add to LR 10.12 a new exception 6 for issues approved under Item 7 of section 611 of the Corporations Act equivalent to to existing exception in LR 7.2 exception 16.

HopgoodGanim Lawyers Comment: No comment.

ASX proposes to amend LR 10.12 exception 7 (issues on the conversion of convertible securities) to make the drafting consistemt with the proposed amendments to the equivalent exception in LR 7.2 exception 4.19.

HopgoodGanim Lawyers Comment: No comment.

ASX proposes to amend LR 10.12 exception 9 (issues under agreement to issue securities) to make the drafting consistent with the proposed amendments to the equivalent exception in LR 7.2 exception 13.

HopgoodGanim Lawyers Comment: No comment.

ASX proposes to add to the list of exceptions in LR 10.15B a further exception for an issue of equity securities pursuant to options or other rights to acquire securities granted to directors or their associates under an employee incentive scheme. For the exception to apply, the entity must has issued the options or other rights:

(1) before it was listed and disclosed the information referred to in LR 10.15.1 - 10.15.9 in relation to the issue in the prosepectus, PDS or information memorandum lodged with ASX under LR 1.1 condition 3; or

(2) after it was listed with approval of holders of ordinary securities under LR 10.14.

In each case above, the issue of equity securities will be taken to have been made with the approval of holders of ordinary securities under LR 10.14, meaning that the issue will also be exempt from LR 10.11 under existing exception 4 of LR 10.12.

HopgoodGanim Lawyers Comment: No comment.

2.3 **General Comments** on proposed changes to notices of meeting.

Refer to paragraph 3.6 in the Consultation Paper.

New LR 10.5 updates the requirements for a notice of meeting to approve transaction under LR 10.1 (approval required for certain acquisitions or disposals) requiring disclosure of details of the asset being required or disposed of, consideration, intended source of funds, use of funds, timetable for completion, summary terms of acquisition agreement, voting exclusion statement and report (fair and reasonable) on the transaction from an independent expert.

Expansion and rationalising the requirements of meetings have been provided for in LR 7.3, 7.3A, 10.13 and 10.15.

In LR 7.3, there is an added requirement that notice of meeting include names of persons to whom the entity will issue the securities or the basis upon which the persons will be identified or selected, if securities not full paid a summary of material terms of securities, if securities are issued under an agreement, a summary of material terms of agreement. New requirement that if securities are being under or to fund a reserve takeover, information about the reverse takeover.

HopgoodGanim Lawyers Comment: No comment.

In LR 7.3A there is an added requirement to include additional statement of period which approval will be valid.

HopgoodGanim Lawyers Comment: No comment.

In LR 10.13, notices of meeting for approval of securities to related parties must have name of person, which category person falls

	within and why, class of securities, if the securities are not full paid ord securities, summary of material terms of securities, purpose of the issue (intended use of funds) and summary of material terms of agreement (where relevant). **HopgoodGanim Lawyers Comment**: No comment In LR 10.15, notices of meeting to approve acquisition of equity securities by person under employee incentive scheme (r10.14) must have name of person, category, if person is a director or associate and details of directors total remuneration package, if securities are not full paid a summary of the securities, dates by which entity will issue the securities to person under the scheme and a statement that details of the securities issued under the scheme will be published in the annual report of the entity and any additional persons covered by r10.14 will become entitled to participate in the scheme after resolution approved but not mentioned in the notice of meeting will not participate until approval is obtained. **HopgoodGanim Lawyers Comment**: No comment.
2.4 **Feedback on the proposed changes to rule 10.15 dealing with the approval of issues to directors and their associates under employee incentive schemes** • Are the proposed changes appropriate, in terms of their reach and content? • Will the proposed changes be burdensome to comply with? Might there be any unintended consequences if the proposed changes are adopted? Refer to paragraph 3.7 of the Consultation Paper.	The proposed change merges LR 10.15 and 10.15A into the one rule (LR 10.15). The new LR 10.15 will be substantially based on 10.15A . Given LR 10.15 and 10.15A are substantially the identical apart from the requirement in 10.15A.8 for some additional disclosures in the notice of meeting and in the entity's annual report, ASX does not see the need to maintain the two regimes. ASX is proposing to add a requirement in new LR 10.15.3 that the relevant director's current total remuneration package is also disclosed, so as to provide context for security holders in deciding the reasonableness pf the award being made to the director under the employee incentive scheme. Voting exclusions for LR 10.1 and 11.4 are also to be amended to include a reference to "a person who will obtain a material benefit as a result of the transaction." Guidance as to what constitutes a "material benefit" is to be provided in GN 24. **HopgoodGanim Lawyers Comment**: No comment.

2.5 Feedback on the proposed changes to voting exclusions

- Are the proposed changes appropriate in terms of their reach and content?
- Will the proposed rules be burdensome to comply with?
- Might there be any unintended consequences if they are adopted?

Refer to paragraph 3.8 of the Consultation Paper.

ASX proposes to split the currently combined voting exclusions for rule 7.1 and 7.1A into separate exclusions. The voting exclusion under rule 7.1A will be modified to reflect the changes proposed to rule 7.3A.7 so that a voting exclusion statement will only be required where, at the time of dispatching the notice of meeting to approve a rule 7.1A mandate, the entity is proposing to make an issue of equity securities under rule 7.1A.2.

HopgoodGanim Lawyers Comment: No comment.

The separate voting exclusion statements that currently exist for resolutions under rule 10.5 and 10.9 will be removed. Rule 10.5 (option arrangements) is being absorbed into rule 10.4 and an approval under that rule will now be treated as an approval under rule 10.1 (acquisitions and disposals) and therefore attract the voting exclusions applicable to resolutions under 10.1. Rule 10.9 (ASX may take corrective action) is proposed to be deleted.

HopgoodGanim Lawyers Comment: No comment.

The existing references in the voting exclusions for rules 11.1 and 11.2 to "a person who might obtain a benefit, except a benefit solely in the capacity of a holder for ordinary securities, if the resolution is passed" is considered by the ASX to be too broad and uncertain. Therefore these reference will be replaced with reference to a person who will obtain a "material benefit" as a result of a relevant transaction. ASX will give guidance on what types of benefits are considered material for the purposes of voting exclusions in GN 12. Under GN 12 amendments, a 'material benefit' to be one that is likely to incline the recipient of the benefit to vote differently to other security holders of the entity on the LR 11.1.2 or 11.2 resolution – e.g. a professional adviser or other person who will be paid a success fee if the transaction proceeds.

HopgoodGanim Lawyers Comment: We note the potential unintended consequence of the difficulties associated with the entity applying and policing the exclusion and particularly where the 'benefit' is unknown (or not reasonably capable of being known) to the entity.

3. Efficiency Measures

3.1 **Feedback on the proposed changes to the escrow regime**.

- Do stakeholders support simplifying the escrow regime?
- Will the proposed changes reduce the workload currently involved in obtaining escrow agreements from all holders of restricted securities?
- Are there any other changes ASX could make to reduce the burden of the escrow requirements and still maintain the integrity of its escrow regime?

Please refer to paragraph 4.1 of the Consultation Paper.

Changes are suggested to the escrow regime in Chapter 9 of the Listing Rules and Appendices 9A and 9B to reduce the admininstrative burden for applicants seeking to list on the ASX. ASX is proposing the introduction of a new two tier escrow regime where:

- More significant securities holders (e.g. related parties, promoters, substantial holders, service providers) execute a formal Appendix 9A escrow agreement; and
- Less significant holders rely on a provision in the entity's constitution which imposes escrow restrictions on the securities holder, and the entity gives a notice to the holder of restricted securities in the form of a new Appendix 9C advising of the restrictions.

ASX proposes to reinforce the new regime with requirements that:

- if the securities are quoted, they must be held on the entity's issuer-sponsored sub-register and made the subject of a holding lock for the escrow period; or
- if the securities are not quoted, they must be held on the entity's certificated sub-register with the certificates held in escrow by a bank or other recognised trustee for the escrow period.

To enable this, the ASX proposes the following changes:

- substantive amendments to Chapter 9, including redrafting and removal of certain rules;
- amendments to certain definitions and additional definitions in rule 19.12; and
- addition of a new appendix 9C.

ASX also proposes removing the current escrow restrictions in item 6 of Appendix 9B which applies to vendors who are not persons referred to rule 10.1 (concerning persons in a position of influence) at the time of the acquisition of the classified asset. ASX considers that item 6 is unnecessary given ASX may apply rule 10.1 to persons it so determines.

HopgoodGanim Lawyers Comment: No comment.

3.2 **General Comments** on:

- Notification by profit test entities of continuing profits;
- Agreements for admission and quotation;
- Eliminating the need to apply for a number of standard waivers; and
- Standard forms.

Refer to paragraphs 4.2 to 4.5 of the Consultation Paper.

ASX proposes to make various changes to notifications by profit test entities of continuing profits by amending LR 1.2.5A, agreements for admission and quotation by seperating the application forms for admission to the official list in existing Appendices 1A, 1B and 1C, eliminating the need to apply for standard waivers by amending a number of rules for waivers that are routinely granted by the ASX, and removing a number of standard forms from the listing rule and appendices and making those available on ASX Online.

HopgoodGanim Lawyers Comment: No comment.

4. Updating the timetables for corporate actions

4.1 **Feedback on the proposed changes to the timetables for corporate actions (including in particular the changes to the timetable for interest payments mentioned in section 5.2)**

- Are the proposed changes appropriate in terms of their reach and content?
- Will the proposed changes be burdensome to comply with?
- Might there be any unintended consequences if the changes are adopted?

Please refer to paragraphs 5.1 to 5.14 of the Consultation Paper.

ASX propose to change the timetable for the following corporate actions:

Dividends and distributions (section 1 of Appendix 6A): from 10 business days to 5 business days)

HopgoodGanim Lawyers Comment: No comment.

Interest payment dates (section 2 of Appendix 6A): Previously, section 2 required the record date to identify the persons entitled to receive interest payments on debt securities and convertible deed securities issued before 30 September 2001 to be 7 calendar days before the date of payment or 11 business days before the date of payment and for debt securities and convertible deed securities issued on or after 1 October 2008 to be 8 calendar days before the date of payment. The above provision has been deleted and replaced with a timetable for interest payments which will apply equally to debt securities and convertible deed securities, regardless of when they were issued.

HopgoodGanim Lawyers Comment: No comment.

Satisfaction of interest payments by the issue of quoted securities (section 2 of Appendix 6A): added entry to timetable providing that if an interest payment is to be satisfied by the issue of quoted securities, the last day for the entity to issue the securities and apply for their quotation is 5 business days after the due date for the interest payment.

HopgoodGanim Lawyers Comment: No comment.

Option expiry notices (new clause 5.3 to Appendix 6A) new clause to remove requirement in clause 5.2 to send a notice to holder of quote options that are due to expire where the current market price for the underlying security:

a) is less than 50% of the option exercise price; and

b) the highest market price traded on ASX in preceding 6 months is less than 75% of the option exercise price.

HopgoodGanim Lawyers Comment: No comment.

Conversion of expiry of convertible securities (section 6 of Appendix 6A): there is now a shortened period for applying for quotation of securities issued upon the conversion or expiry of convertible securities from 15 business days to 5 business days after the conversion or expiry date.

HopgoodGanim Lawyers Comment: this proposed amendment is reasonable on the proviso there are no additional fees associated with the timing of issue being shortened (given issuer's often hold exercise of options for 'batches' from an administrative perspective). The proposal is a significant change. It will be important that

substantial changes to time allowances are communicated to stakeholders.

Opening date of an issue to existing security holders (section 1 of Appendix 7A): proposed re-drafting and shifting of section 1 of Appendix 7A to rule 7.10. opening date of an issue of securities to existing security holders which is not a pro rata issue must be at least 10 business days after disclosure document or PDS has been sent, unless the disclosure document or PDS is lodged with ASIC and given to ASX at least 7 days before opening date.

HopgoodGanim Lawyers Comment: No comment.

Bonus Securities - (section 2 of Appendix 7A) - shortened period for issuing and applying for quotation of bonus securities from 10 business days to 5 business days.

HopgoodGanim Lawyers Comment: this is reasonable. ASX seem to be amending timetables for quotation to 5 business days for standardisation, as long as the change is communicated. There does not appear to be any unintended consequences for the change.

Offers of specific entitlements (clause 3.2 of Appendix 7A): requirement that if an entity offers a specific entitlement to holders of securities, the offer must be pro rata without restriction on the number of securities to be held before entitlements accrue to be deleted from Appendix 7A and moved to LR 7.11.6 to extend the requirement to all pro rata issues of securities in the entity and not just standard non-renounceable pro rata issues.

HopgoodGanim Lawyers Comment: No comment.

Non-court approved reorganisations of capital (section 8 of Appendix 7A): timetable to be split into separate timetables for splits/consolidations, cash returns of capital and returns by capital by way of in specie distribution of securities in another entity.

HopgoodGanim Lawyers Comment: No comment.

Court-organised reorganisations of capital (section 9 to Appendix 7A): replacement of timetable with new timetable specifically for mergers or takeovers effected via court approved scheme of arrangement.

HopgoodGanim Lawyers Comment: No comment.

Other issues dates (section 10 of Appendix 7A): deleting the existing timetable (not currently used by ASX).

HopgoodGanim Lawyers Comment: No comment.

Equal access buy backs (section 11 of Appendix 7A): timetable updated to include a last day for entity to update the register to cancel the securities bought back and lodge form 484 with ASIC and give copy of form to ASX. Entity to specify the time limit but must be less than 5 business days after offer closing date.

HopgoodGanim Lawyers Comment: No comment.

Security Purchase Plans (section 12 of Appendix 7A): additional time limits for entities to:

(1) Announce results of SPP (3 business days post-Closing Date); and

(2) Issue securities purchased under the SPP and lodge Appendix 2A with ASX to apply for quotation of securities (5 business days post-Closing Date).

HopgoodGanim Lawyers Comment: No comment.

HopgoodGanim Lawyers Comment: Broadly, we agree with the proposed changes to the timetable for corporate action and agree that shortening and standardising the timeframes for corporate actions would be beneficial for stakeholders.

It will be important that the ASX raise stakeholder awareness of the shorter timeframes for entities (for example in section 6 of Appendix 6A where the time constraint for corporate action is currently 15 business days but will be changed to 5 business days.). These will need to communicated effectively to entities considering corporate action as these entities will need to factor in the revised timetable into their transaction planning.

4.2 **Feedback on the issues raised in section 5.14 concerning:**

- the importance or otherwise of ASX allowing deferred settlement trading in securities affected by corporate actions;
- any costs, risks or disadvantages associated with deferred settlement trading and how they might be mitigated; and
- any changes that could be made to improve the operation of deferred settlement markets.

Refer to paragraph 5.14 of the Consultation Paper.

Timeframes for deferred settlement trading for securities issued under certain corporate actions will be shortened and standardised due to proposed changes to timetable in column above. The effect the proposed changes will have is to make the timetables for those corporate actions that qualify for deferred settlement trading shorter and more consistent. The benefits of deferred settlement trading are that investors can manage their exposure to market risk on the securities they expect to receive on corporate action, and greater liquidity and timelier price discovery for those securities.

HopgoodGanim Lawyers Comment: No comment.

5. Monitoring and enforcing compliance with the listing rules

5.1 **General Comments** on ASX rule changes to:

- Waivers;
- Conditional no-action letters;
- Powers and discretions;
- Requests for information;
- Compliance requirements; and
- Censures.

ASX proposes to enhance its powers to operate the market and monitor and enforce compliance with the listing rules. The changes include:

- Clarification of LR 18.1 regarding ASX's ability to grant waivers;
- Clarification of LR 18.5 regarding ASX's ability to impose conditions in connection with decisions not to take action

Refer to section 6 of the Consultation Paper.

against entities;

- Adding a new LR 18.5A stating that the ASX may exercise or not exercise any power or discretion in relation to an entity it its absolute discretion and may do so on any conditions;
- Clarification of LR 18.7 regarding ASX's requests for an entity to provide any information, document or explanation that ASX asks for, and that ASX may require the information, document or explanation requested to be verified under oath;
- Amendments to LR 18.8 to list specific examples of the types of requirements ASX may impose on a listed entity; and
- New LR 18.8A which gives the ASX power to censure a listed entity that breaches the listing rules or a condition imposed under the listing rules, and to publish the censure and the reasons for it to the market.

ASX notes that most major exchanges have the formal power of public censure and states that it only expects to exercise this power where the breach is egregious and warrants a public censure. ASX has also stated in relation to requesting information to be provided to it under oath that this measure is targeted at preventing un-truths from entities to the ASX when it has requested information.

HopgoodGanim Lawyers Comment: We have no comment on the changes proposed relating to the ASX's monitoring and enforcement powers where the amendments have the effect of clarifying the operation of the listing rules. However we do consider that ASX ought enhance its practice and approach to providing reasons for its decision making when exercising these powers and transparency of such will assist in issuer's understanding of decisions and having the ability (where applicable) to question as to consistency and appeal avenues.

We do not agree with the inclusion of LR 18.5A. It is unnecessary to bring in new LR 18.5A which only has the effect of restating the operation of ASX's powers and discretions and ability to impose conditions which are already expressed in Chapter 18 in its current form and, for example, through LR 18.5, and 18.8.

We also do not agree with the amendments to LR 18.7. Though the intent behind amending LR 18.7 is understandable and HG agrees that the mischief / misbehaviour that the rule is intending to prevent should not occur, we remain unconvinced that the operation of the rule will have the intended effect. We also note that ASX already has powers under the exisitng LR 18.7 to request listed entities to provide information and have it scrutinised by an expert at the entity's expense. We do not think that the amendments suggested of LR 18.7 will assist in further preventing wrongful behaviour.

Regarding LR 18.8A, HG strongly suggests that clear guidance be provided by the ASX on how and when this censure power would be used.

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6. Correcting gaps or errors in the listing rules

6.1 **General Comments** on

- Time limits to apply for quotation of securities
- Employee incentive scheme issuances

Refer to paragraphs 7.1 and 7.2 of the Consultation Paper.

ASX proposes to fix gaps in LR 2.8 regarding time limits to apply for quotation of securities by addressing existing Corporations Act requirements, and to cover the conversion of unquoted convertible securities into quoted securities. ASX also proposes to amend the concluding paragraph of LR 2.8 to address the fact that currently an Appendix 3B is used by many listed entities both for announcing issues of securities and for seeking quotation.

HopgoodGanim Lawyers Comment: No comment.

6.2 **General Comments** on

- Listing rule 7.1 and 7.1A placement capacities
- Ratifying an agreement to issue securities

Refer to paragraphs 7.3 and 7.4 of the Consultation Paper.

HopgoodGanim Lawyers Comment: We have no comments on the proposed amendment to LR7.1 and 7.1A, which will correct a flaw in the definition of variable "A" and to introduce the concept of a "relevant period".

We have no comments on the proposed amendments to LR7.4 and 7.5 to allow a listed entity to have its security holders ratify an agreement to issue securities.

6.3 **General Comments** on

- Agreements to acquire or dispose of substantial assets

Refer to paragraph 7.5 of the Consultation Paper.

Amendments to LR 10.1 to deal more appropriately with agreements to acquire or dispose of substantial assets and remove an ambiguity as to when the applicable test for application of the rule should be applied.

HopgoodGanim Lawyers Comment: No comment. Refer to section 8.7 below.

6.4 **General Comments** on:

- Substantial holders under rule 10.3;
- Exceptions to rule 10.1;
- Voting exclusions;
- Fees;
- Interpretation;
- Associate;
- Child entity;
- Control;
- Related Entity; and
- Warranties.

Refer to paragraphs 7.6 to 7.15 of the Consultation Paper.

Substantial holders; ASX correction of a potential drafting ambiguity in LR 10.1.3 that arises from the way in which "substantial holders" is defined. The re-draft results in the operation of LR 10.1.3 applying whenever the counterparty to the relevant acquisition or disposal is, or at any time in the preceding 6 months has been, a substantial holder. ASX is proposing to include a new definition of the "substantial holder" in LR 19.12 based on the definition of that terms in section 9 of the Corporations Act, but replacing the reference to 5% to 10%.

HopgoodGanim Lawyers Comment: No comment.

Exceptions to LR 10.1. ASX to correct a number of issues with the exceptions in LR 10.2 including:

- replacing references to wholly owned subsidiaries to "child entities";
- removing the fourth bullet point in LR 10.3 – if a substantial asset is not beneficially held for the listed trust before or after the transaction, it is not an asset of the listed trust and so there is no need for the exception; and
- adding two new exceptions to LR 10.3 – an acquisition or disposal under an agreement to acquire of dispose of a substantial asset, and an agreement to acquire and dispose of

a substantial asset that is conditional on the holders of ordinary securities approving the transaction under rule 10.1 before the agreement is given effect to. In the case of the second exception, the entity must not give effect to the agreement without first obtaining the requisite approval. This will align the exceptions in LR 10.3 with those in LR 10.12 and ensure that the listing rules deal appropriately with agreements to acquire or dispose of a substantial asset.

HopgoodGanim Lawyers Comment: No comment.

Voting exclusions – LR 14.4. ASX proposes to remove the reference in LR 14.11 to votes cast by a person chairing a meeting as proxy for a person who is entitled to vote, in accordance with a direction on the proxy form to vote as the proxy decides. Where the chair is not subject to a voting exclusions, LR 14.11 has no application. If a chair is subject to a voting exclusion, under section 250C of the Corporations Act, they can only cast a vote as proxy for a security holder who is not subject to a voting exclusion of the proxy specifies the way the chair is to vote on the resolution.

HopgoodGanim Lawyers Comment: No comment..

Fees – Amending LR 16.4 to confirm ASX's practice not to charge an additional listing fee when quoted partly paid securities become fully quoted paid securities.

HopgoodGanim Lawyers Comment: No comment.

Interpretation – amending LR 19.3.1 to specify that a reference to an ASIC Class Order in the rule includes any amendment or replacement of that Class Order. This reflects the proposed reference to an ASIC Class Order in the definition of "security purchase plan" in LR 19.2.

HopgoodGanim Lawyers Comment: No comment.

Associate – modify the definition of 'associate' in LR 19.12 to differentiate better between the associates of a natural person and the associates of an entity.

HopgoodGanim Lawyers Comment: No comment.

Child entity – modifying the definition of "child entity" in LR 19.12 to correct an error in the existing definition. Currently that definition treats the subsidiaries in the Responsible Entity (RE) of a listed trust as child entities of the trust. This is only appropriate if the RE controls those entities in its own capacity or in its capacity as RE of a listed trust. However if the RE controls those entities in a fiduciary capacity as RE of the listed trust then, by definition, they are not subsidiaries of the RE (see section 48(20 of the Corporations Act).

HopgoodGanim Lawyers Comment: No comment.

Control – introducing a definition of control into rule 19.12. The proposed definition is based on section 50AA of the Corporations

	Act, with modifications to address when a trust controls other entities. **HopgoodGanim Lawyers Comment**: No comment. Related Party – amending the definition of "related party' in rule 19.12, which currently incorporates by reference the provisions of sections 208 and 601LA of the Corporations Act, to correct two drafting flaws in those sections, in so far as they apply to trusts/managed investments schemes. Currently, those sections don't capture entities controlled by the RE in a capacity other than as RE, which they should. They also exclude entities controlled by related parties of they are also controlled by the RE. That exclusion should only operate where the RE controls those entities in its capacity as RE and not in some other capacity. **HopgoodGanim Lawyers Comment**: No comment. Warranties – expanding the warranties currently in clause 2 of the Appendix 1A, 1B and 1C applications for admission and clause 2 of the Appendix 3B application of securities to include warranties that: • the securities to be quoted by ASX have been validly issued; and • all of the documents and information the entity has given, or will give, to ASX in connection with (in the case if an Appendix 1A, 1B or 1C) its admission to the official list and (in all cases) the quotation of its securities are, or will be, accurate, complete and not misleading. **HopgoodGanim Lawyers Comment**: No comment.

7. General drafting improvements

7.1 General Comments on Drafting changes to the rules and definitions: • Adding to rule 19.12 new definitions of "CEO" and "chair" • Amending rules 3.10.1, 3.10.2 and 3.21, and introducing new rule 3.22; • Amending rule 3.13.3; and • Consolidating rules 10.4, 10.5, and 10.6 into one rule 10.4. Refer to section 8 of the Consultation Paper.	**HopgoodGanim Lawyers Comment**: We make no comment in response to the general drafting improvements proposed.

8. New and amended guidance

8.1 **General Comments on GN 1 Applying for Admission** Refer to paragraph 9.1 of the Consultation Paper.	There are changes proposed to GN 1 Applying for Admission which have been marked up in Annexure B to the Consultation Paper. The changes largely reflect amendments to the listing rules as discussed below, but also include new guidance regarding:

	• the role of the Information Form and Checklist (ASX Listings); • disclosure of adviser fees and prerequisites; • disclosure of placements involving related parties, promoters or advisers; and • disclosure of certain information about bookbuilds. **HopgoodGanim Lawyers Comment**: No comment.
8.2 **General Comments on GN 11 Restricted Securities and Voluntary Escrow** Refer to paragraph 9.2 of the Consultation Paper.	Amendments to GN 11 have not been marked up as it has been substantially re-written to reflect the changes in the escrow regime. The guidance note includes enhanced escrow measures intended to deal with issues arising from new and back door listings where friends, family and associates participating in pre-listing issues of securities at a substantial discount. **HopgoodGanim Lawyers Comment**: No comment.
8.3 **General Comments on GN 12 Significant Changes to Activities** Refer to paragraph 9.3 of the Consultation Paper.	The changes to GN 12 include the changes to Chapter 1 of the listing rules, amended voting exclusions, the new escrow regime and new and amended definitions. **HopgoodGanim Lawyers Comment**: No comment.
8.4 **General Comments on GN 13 Spin outs of Major Assets** Refer to paragraph 9.4 of the Consultation Paper.	GN 13 has been substantially re-written with updated guidance on how ASX applies the prohibition in LR 11.4 on spin-outs of major assets and the exceptions to that prohibition in LR 11.4.1. **HopgoodGanim Lawyers Comment**: No comment.
8.5 **Feedback on proposed guidance in GN 21 The Restrictions on issuing Equity Securities in Chapter 7 of the Listing Rules** • Do stakeholders agree with this guidance? • Will complying with the guidance be burdensome? • Might there be any unintended consequences if ASX adopts the guidance? Refer to paragraph 9.5 of the Consultation Paper.	**HopgoodGanim Lawyers Comment**: We do not agree with the proposed position set out in this guidance that, for a placement to 10 or fewer persons, ASX will expect those persons to be specifically named. As noted below in the discussion relating to the proto-type Appendix 2A, 3B and 4A forms, this represents a much higher disclosure obligation than is currently in place. By means of contrast: • the existing appendix 3B only requires disclosure of names of recipients of shares where an application is made for securities forming a new class of shares, and then only the names of the top 20 shareholders for that class of shares; • LR 7.3.4 requires that a notice of meeting for a LR 7.1 approval must include the names of people to whom securities will be issued or the basis on which those persons will be identified or selected. However, there is no strict requirement that names be disclosed (even for issues to 10 or fewer people), as entities are able to choose to instead disclose the basis on which recipients will be identified. As such, the proposed requirement to disclose names for issues to 10 or fewer people represents a significantly higher disclosure requirement to those currently in place. There are already several mechanisms by which holders of securities in an entity can be identified, such as the requirement to issue a significant holder notice for any holder with more than a 5% interest in an entity (per s671B of the Corporations Act), which must be included in a

		company's annual report per existing LR 4.10.4. Accordingly it is not necessary to require further disclosure of the identity of participants in a placement as is being suggested. We also call attention to section 4.4 of this guidance, which states that directors should state their allocation policy in complying with the proposed LR 7.2 Exception 3, specifically the guidance that it is not sufficient to simply state that the company reserves the right to allocate the shortfall at the director's discretion. We are concerned that this may limit the ability of some companies to raise capital where a prior established allocation policy may not be feasible for some companies. If ASX's intention is that flexibility can be maintained in an allocation policy, we would not forsee problems with this amendment. However if ASX requires a detailed allocation policy, the amendment may prove problematic. It is also noted that ASIC is also monitoring allocation processes at the moment so ASX's position on allocation seems to reflect that - https://asic.gov.au/about-asic/news-centre/find-a-media-release/2018-releases/18-389mr-asic-reviews-allocations-practices-in-equity-raising-transactions/ Section 7.10 of the proposed guidance ASX indicates that an entity conducting a poll on a resolution under LR 7.1, 7.1A or 7.4 should ensure that is conducts a properly scrutineered voting process. While we agree with ASX's aim that such voting on such resolutions be appropriately scrutinized, we note that it is not clear if 'properly scrutineered' requires a third party scrutineer provided by a share registry, or if merely a transparent voting process with suffice. We suggest additional guidance be included to address this point, noting that in our view requiring a third party scrutineer provided by a share registry for all votes on resolutions of this type may be overly burdensome on entities.
8.6	**Feedback on the policy position in GN 24 - Acquisitions and Disposals of Substantial Assets Involving Persons in a Position of Influence** • Feedback on the appropriateness of the waivers referred to in section 8.2- 8.4 of GN 24 • Feedback on the proposed policy position in section 4.9 of GN 24 and whether there are any specific cases where ASX should consider granting a waiver of rule 10.11; • Whether there are any other specific cases where ASX should consider granting a waiver of rule 10.1. Refer to paragraph 9.6 of the Consultation Paper.	ASX has proposed an entirely new GN 24 to replace the existing GN 24. The new GN 24: • sets out the policy underpinning LR 10.1; • explains key terms and the parties caught by LR 10.1; • explains the exceptions of LR 10.3; • applies LR 10.1 to particular cases; • discusses requirements for notices of meeting; and • goes through waivers of LR 10.1. ASX notes that generally, ASX must be satisfied that there is no reasonable prospect of any counterparty to the transaction influencing the terms of the transaction to favour themselves at the expense of the entity. General waiver positions are set out for stapled entities, standard supply agreements, and circumstances where there is a grant of security to a LR 10.1 party. **HopgoodGanim Lawyers Comment**: No comment.
8.7	**Feedback on GN 25 - Issues of Equity Securities to**	Under GN 25, ASX will only waive the requirement for

Persons in a Position of Influence

- Feedback on the proposed policy position in section 2.8 of GN 25;
- Whether there are any specific cases where ASX should consider granting a waiver of rule 10.11; and
- Feedback on the issues raised in sections 9.6 and 9.7 above about the circumstances in which ASX should consider waiving the security holder approval requirements in rules 10.1, 10.11 and 10.14.

Refer to paragraph 9.7 of the Consultation Paper.

securityholders to approve an issue of equity securities to a related or closely connected party in exceptional circumstances, where it is clear to ASX that the harm LR 10.11 seeks to protect against is not present.

To receive a waiver the entity must establish that there is no reasonable prospect of the recipient of the securities, either itself or through its connections to the board or a controlling securityholder, influencing the terms of issue or transaction to favour themselves at the expense of the entity. The bar is high and it is not sufficient for the relevant director to excuse themselves from participating in discussion and decision-making at board level.

HopgoodGanim Lawyers Comment: HG is concerned that within the mining industry and in particular Western Australia, it is often the case that the main support for junior explorers and similar entities, is largely found within the existing connected parties to the company. HG does not consider the broadening of the definition of closely connected party and its extension to CEO's of an entity to be appropriate when considering Related party waivers for transactions involving a person in a position of influence (e.g. LR 10.1 and 10.11) as any waivers will be unrealistically difficult to get.

8.8 **Feedback on the proposed changes to GN 33 Removal of Entities from the ASX Official List**

Refer to paragraph 9.8 of the Consultation Paper.

Automatic Removal from the List

ASX proposes to automatically remove entities whose securities have been suspended from quotation for 2 years, and will automatically remove the entity after 1 year if the entity's securities have been suspended from quotation under rule 17.5 for failure to lodge financial statements and other documents. Currently, automatic removal only occurs after 3 years of suspension.
In the second case above, to be reinstated to quotation the entity will need to lodge the outstanding documents and accounts that should have been lodged during the suspension period.

ASX has also provided further details on when it will grant entities a deadline extension before the entity is automatically removed from the list. ASX must be satisfied that the entity is reasonably capable of consummating a transaction that will lead to a resumption in trading. ASX may also agree to a short deadline extension to entities that have failed to lodge accounts if an external administrator has been appointed which has the benefit of deferred financial reporting obligations under ASIC Instrument 2015/251.

It is noted in the Consultation Paper that the changes to GN 33 will begin to take effect from 1 July 2019. The effect of this is that:

- entities suspended under LR 17.5 that have been continuously suspended since on or before 1 July 2018; and
- entities suspended under any other rule that have been continuously suspended since on or before 1 July 2017,

will be automatically removed from the official list at the commencement of trading on 2 July 2019.

HopgoodGanim Lawyers Comment: We do not support the

changes regarding automatic removal from the official list under GN 33 and consider the amendments to the time limits before automatic suspension occurs to be unnecessary. Under the existing rules, entities will already be automatically removed after a suspension period of 3 years.

Having this change in policy to come into effect on 1 July 2019 will, on one view, enable the new position in GN 33 to operate retrospectively and is unjustifiably burdensome on entities which have been suspended for the past 12 to 24 months. This amounts to the imposition of a retrospective penalty which in our view is arbitrary.

HG also disagrees that automatic suspension should occur after 12 months for failure to lodge financial statements and documents as required under LR 17.5. HG appreciates the importance of lodging these documents on time to inform the market, but believes that the imposition of the deadline occurs too soon under the current amendments. An extension to 18 months may be more palatable.

HG considers the ASX should also grant waivers or extensions to the automatic removal period in appropriate circumstances and ASX should provide appropriate guidance as to when waivers or extensions will be granted; or an approporiate 'transition' period outlined.

Voluntary Removal

ASX also proposes to update its guidance on requests for voluntary removal from the official list. Pursuant to the changes, under the updated guidance:

- avoidance of disclosure obligations under the Listing Rules at ss 674 and 675 of the *Corporations Act 2001* (Cth) is now an additional unacceptable reason for why an entity may ask to be removed from the list;
- required disclosures in a market announcement regarding removal must indicate whether or not the entity will become an "unlisted disclosing entity" and detail any ramifications;
- there are now more examples for when ASX may impose voting exclusions on voting to approve removal from the list - holders will now not be permitted to vote where ASX is concerned that the removal is intended to avoid the entity's disclosure obligations, and will not be able to vote where ASX is concerned that a security holder or their associate is likely to obtain a material benefit from being no longer listed; and
- there is additional guidance on contents of notices of meeting, voting exclusions, voting by employee incentive schemes, supplementary disclosures, and notification of meeting results;
- there are further examples of circumstances in which ASX may terminate a listing, including refusing to comply with the JORC Code, and failing to maintain a spread of security holdings

Under the new guidance, the relevant notice of meeting will need to detail:

- the consequences of removal from the official list,
- details of any buy back or other facility the entity is proposing to put in place that allows security holders to sell or redeem them;
- information about the intentions of material shareholders to participate in that buy back or other facility;
- remedies security holders may pursue under the Corporations Act Part 2.1 if they consider the removal contrary to the interests of security holders, oppressive, or unfair; and
- any other information specified by ASX having regard to the circumstances.

ASX also seeks feedback on whether a resolution to approve a voluntary de-listing should be an ordinary or a special resolution.]

HopgoodGanim Lawyers Comment: Overall, HG agrees with the proposed changes. However we note that entities applying for voluntary removal which are subject to a voting exclusion may find it difficult to obtain the approval due to lack of overall shareholder participation and engagement. ASX may wish to consider including guidance around when it will grant a waiver of the requirement to include a voting exclusion in the specified circumstances.

For similar reasons, HG suggests that resolutions to approve a voluntary de-listing should be an ordinary resolution.

9. Accompanying Documents

9.1 **Feedback on the contents of the proto-type Appendix 2A, 3B and 4A forms included in Annexures K, L and M**

Feedback is to include in particular the provisions in the Appendix 2A and 3B forms requiring an entity using its Listing Rule 7.1 or 7.1A.2 placement capacity to make:

- an issue of securities under an SPP that falls outside of rule 7.2 exception 5;
- an offer of securities under a disclosure document or PDS that falls outside of the exceptions in rule 7.2; or
- a placement or other issue of securities that falls outside of the exceptions in rule 7.2,

without security holder approval to complete the applicable work sheets in Annexures B and C of GN 21 and send them to its ASX listings adviser to confirm that the entity has the available placement capacity under those rules to make the issue.

Refer to section 10 of the Consultation Paper.

General Comments

HopgoodGanim Lawyers Comment: We broadly agree with ASX's intention to split the existing Appendix 3B into two separate appendices (the new 2A and 3B), and have the following comments on the proposed draft appendices. HG makes the obervation that there ought to be functionality to select multiple security types - for example, options attaching to shares. HG also notes the need for clarity around section 708A (cleansing statement) timing implications across various corporate actions, including section 708AA rights issues etc.

Shifting the forms to ASX Online will make it easier for ASX to change and update the forms - the proposed new LR 19.8B prevents ASX from amending or replacing a form without giving 14 days' notice.

As a general note, we agree with the proposal to move the form component of each appendix to an ASXOnline smart form. We suggest however that ASX may wish to consider developing and making available corresponding downloadable offline versions of the forms, to enable companies to prepare a draft appendix prior to entering the required information into ASXOnline. This will allow

companies to ‘pre--create’ a relevant appendix prior to entering the information into ASXOnline, allowing the information to be checked more easily by the company both internally and with its advisors, which may assist in reducing any inadvertent errors in information inputted into ASXOnline.

As a further general note, it is noted that under the new Appendix 2A and 3B there is a requirement to send worksheets (annexures B and C from the new GN 21) to the company’s ASX listings advisor. However, it is not clear if a corresponding approval of the worksheet needs to have been received before the company lodges its Appendix 2A/3B. Requiring that such a response be received before the corresponding 2A/3B can be lodged may lead to time delays in companies being able to lodge their appendix 2A/3B notices, as there can be no guarantee of a set turn-around time by the ASX listings advisor. We therefore suggest that language be included in the proposed 2A and 3B forms (and the new GN 21) to clarify that the worksheets need to have been sent, but that no response needs to have been received prior to lodgement.

We express concern that the requirement to provide the above worksheets to the ASX officer for approval may result in undue delay. We seek clarification of this review process and indicative turn around times or whether this is a ‘for information only’ filing.

Appendix 2A

HopgoodGanim Lawyers Comment: In relation to the new Appendix 2A, we make only a few comments:

- Item 10 of the draft Appendix 2A queries the proposed date of issue of securities. It would be very useful if GN 21 were to provide guidance on how strict ASX proposes to be on this indicative date. For example, if the securities were issued one day after the date originally proposed for their issue under an Appendix 2A, would ASX require a new Appendix 2A be issued to update that information, or would this be seen as a ‘de minimis’ change and therefore no updated Appendix 2A would be required? Note that this comment applies to all instances in the proposed Appendix 2A and 3B which refer to intended dates of issue.
- Item 37 of the draft Appendix 2A refers to sending the entity’s ASX listings advisor a worksheet per Annexure B of GN 21 (and similarly item 40 relates to an Annexure C worksheet). As noted above, it is not clear if a response is expected from the ASX Listings Advisor before the entity lodges the Appendix 2A. We suggest clarifying wording be added in this regard.

Appendix 3B

HopgoodGanim Lawyers Comment: In relation to the new Appendix 3B, we make the following comments:

- we assume the proposed new Appendix 3B will allow for the notification of multiple classes of securities on the one form, however this is not clear from the form itself. We suggest

guidance on this be included either in the new GN 21 or in the new Appendix 3B itself;

- Item 17 of the draft Appendix 3B queries what date it is expected that conditions will be satisfied before a proposed bonus issue is made. Please refer to our comment above in relation to ASX's expectation of the accuracy of estimated dates, and ASX's intended approach to requiring updated forms in the event that estimated dates are not met. This comment can be applied to all items in this draft Appendix that relate to giving estimates of dates;
- Item 128 of the draft appendix 3B requires the company input an indicative price range for a bookbuild. In our view, this is too onerous a requirement to impose on entities. Being required to disclose a value range for shares before bookbuild negotiations take place may lead to un-commercial outcomes for companies planning to undertake a capital raising;
- Item 373 of the draft appendix 3B requires the company to disclose the persons to whom securities are proposed to be issued under a placement or other issue. Specifically, if the securities are proposed to be issued to 10 or fewer subscribers, ASX has indicated it expects the subscribers to be named. This represents a much higher disclosure obligation than is currently in place. In contrast, see the existing LR 7.3.4 which requires that a notice of meeting for a LR7.1 approval must include the names of people to whom securities will be issued or the basis on which those persons will be identified or selected. There is no requirement that names be disclosed for issues to 10 or fewer people.

We consider the requirement to name subscribers if securities are proposed to be issued to 10 or fewer subscribers to be in the nature of undue compliance and undue commerical outcomes, especially if these persons are not substantial shareholders.

The proposed Appendix 3B requires much greater disclosure of details in relation to issues than before. See for example items 55, 56 and 57 (which require entities to identify lead managers/brokers and their fees), 59, 60, 61 and 62 (for underwriters, but including a summary of the material circumstances where an underwriter may have the right to avoid or change their obligations) and 64, and 64, 65, 66 and 67 (for related parties who are sub-underwriters). However, as this information is the type normally required to be disclosed anyway, we don't consider its inclusion is too onerous.

New Appendix 4A

HopgoodGanim Lawyers Comment: Our only comment on the proposed new LR 4.11 which requires the filing of the new Appendix 4A is that while our understanding is that ASX currently imposes a condition at admission for entities with CDIs over their quoted securities to notify ASX on a monthly basis via an appendix 3B of changes in the number of CDIs on issue over that month, we suspect that there are a number of entities that have CDIs over their shares that are not currently subject to this condition (for example, if there were no CDIs in place on admission but these were introduced later in the entity's life). We therefore suggest ASX consider a grace

period for existing entities with CDIs in place to file the required Appendix.

END