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Dear Ms Tan

**Submission to ASX on proposed listing rule amendments in consultation draft 28 November 2018**

Jackson McDonald makes the following submissions with respect to the proposed amendments to listing rules as announced by ASX on 28 November 2018.

**New listing rule 2.8.3 – quotation of quoted securities issued on conversion of convertible securities**

The proposed new rule 2.8.3 requiring the quotation of unquoted convertible securities converted into quoted securities within 5 business days after conversion is likely to be problematic for those companies which have issued the unquoted convertible securities without a disclosure document and which are unable to issue a cleansing notice under s 708A(6) of the Corporations Act at the time of conversion, i.e. because the quoted securities have been suspended for more than 5 days during the previous 12 month period.

In circumstances where a company is unable to publish a cleansing notice at or immediately after the time new quoted securities are issued, the company typically publishes a "cleansing" prospectus before the new quoted securities are issued. Typically, a company will require at least 5 business days or more to properly prepare and lodge a cleansing prospectus in accordance with the requirements of the Corporations Act. It would be generally undesirable for a company to be required to be "pressured" into lodging a cleansing prospectus within 5 business days as a matter of course simply to enable the company to comply with the requirements for quotation of new quoted securities.

The potential dilemma for companies in this circumstance is exacerbated in the case of conversion of options and other convertible securities where the listed company does not have control over the timing of the conversion.

Whilst the potential problem can be avoided by the company issuing a prospectus at the time the convertible securities are first issued, in some circumstances companies will wish to issue convertible securities without a disclosure document where they are not required to do so and wish to avoid the additional expense and regulatory burden of publishing a cleansing prospectus (e.g. because the person to whom the convertible securities are issued is a professional, sophisticated investor). There have been many instances of convertible securities being issued without a disclosure document.

We suggest that the potential difficulty could be avoided by the rule being amended to generally require that new quoted securities to be issued within 5 business days after the date of conversion of the convertible securities, except in circumstances where the company is unable to publish a cleansing notice under s 708A(6), in which event the company would have up to 10 business days' time within which to issue the new quoted securities.

Of course, the proposed rule change would not be an issue but for the fact that listed companies are automatically and arbitrarily precluded under s 708A(5)(b) from publishing cleansing notices at the time new quoted securities are issued by reason only of the fact that their securities have been suspended from quotation for more than 5 days in the previous 12 months.

While the interests of the market would be better served by requiring all new securities to be issued within as short a time as possible, the strict requirements of the Corporations Act with respect to "cleansing" necessitate some degree of flexibility to permit companies to publish a cleansing prospectus where required to do so.

The proposed change to 5 business days also seems contrary to the proposed amendment to listing rule 7.1A.3(b) requiring new securities to be issued within 10 trading days. ASX's commentary in the mark-up of the proposed amendments to listing rule 7.1A.3 states that the proposed amendment "responds to feedback ASX has received that in many cases 5 trading days is too short a period for eligible entities to attend to the formalities for issuing securities". We agree with this comment, for the reasons stated above.

**Listing rule 4.7B – quarterly cash flow reporting**

We consider that listing rule 4.7B, in either its existing form or its proposed amended form, should more clearly state the actual manner in which the rule is typically applied by ASX to entities required to complete Appendix 4C.

Rule 4.7B in both its current and proposed amended forms provides for Appendix 4C reporting for the first 8 quarters after admission or such longer period set by ASX.

On the face of the rule (as currently stated and as proposed by the amendments), unless ASX actually sets or requires a longer period, the rule can only be interpreted as requiring a listed company to lodge quarterly cashflow reports only for the first 8 quarters after admission.

In practice, for many companies required to report under listing rule 4.7B ASX typically requires a longer period of Appendix 4C reporting than the first 8 quarters in the circumstances described in section 11 of Guidance Note 23.

A concern arises however as to how the rule is to be interpreted in circumstances where ASX does not expressly inform the entity that it will be required to continue quarterly cashflow reporting for a period longer than the first eight quarters after admission. In our experience, some companies which have been required to lodge Appendix 4C cashflow reports have:

(a) erroneously thought that the requirement was only for the first 8 quarters after admission, unless they were informed by ASX otherwise; and

(b) have not been informed by ASX in writing that they are required to continue cashflow reporting for a period longer than 8 quarters.

We suggest that listing rule 4.7B can only be properly understood and applied by having regard to Guidance Note 23, particularly section 11 of Guidance Note 23.

We therefore suggest that:

(i) as a minimum, the amended listing rule 4.7B include specific cross reference to Guidance Note 23 in a similar manner to other guidance note cross references to other listing rules, e.g. listing rule 4.10.17, a note to which refers to Guidance Note 10; and

(ii) possibly, the rule should be amended to more clearly state the requirement is to publish an Appendix 4C report for such period of time as determined by ASX, which will be for a minimum of 8 quarters after admission.

**Listing rule 7.2, exception 2 and listing rule 10.12, exception 2 – exception for underwriting arrangements**

The proposed amendments to listing rule 7.2 exception 2 and listing rule 10.12 exception 2 would appear to require that details of the underwriting to actually be stated in the initial Appendix 3B lodged under listing rule 3.10.3 when an announcement is first made of a proposed issue of securities.

If this is the intended effect of the amendment then we suggest the amendment potentially and significantly narrows the scope of the exception to situations where the underwriting arrangements have been fully determined and agreed at or before the time the company is first required to announce the proposed issue of securities under listing rule 3.10.3.

There are cases where a company announces a proposed pro rata issue of securities before underwriting arrangements have been agreed, and then subsequently announces those underwriting arrangements when agreed (and before the actual issue of securities).

If it is not intended that the underwriting details must have been disclosed in the first Appendix 3B lodged when the proposed issue of securities is first announced, then we suggest the amended rule should clarify that the details may be disclosed in either the initial Appendix 3B for the proposed issue or in a subsequent announcement when the underwriting agreement is entered into (but before the actual issue of the securities).

Yours faithfully

Jackson McDonald