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1 March 2019

To Mavis Tan
Manager, Compliance Reporting and Education & Research Program
ASX Limited
PO Box H224
Australia Square
Sydney NSW 1215
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Dear Ms Tan,

KWM's submissions on ASX's public consultation on reforming the ASX Listing Rules

We refer to ASX Limited's ("**ASX**") public consultation on simplifying, clarifying and enhancing the integrity and efficiency of the ASX listing rules dated 28 November 2018.

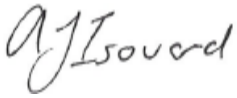
King & Wood Mallesons ("**KWM**") welcomes the opportunity to comment on the proposed reforms to the ASX listing rules. In our view, ASX's proposed comprehensive reforms contain many good ideas and will go a long way to achieving its objectives of simplifying, clarifying and enhancing the integrity and efficiency of the ASX listing rules.

We have included in the Annexure a table setting out ASX's proposed reforms and our responses, omitting any proposed reforms that we did not have comments on. We have taken into consideration ASX's reasons for the proposed reforms when preparing our submissions.

We would be happy to discuss if you have any questions in relation to our submissions and have specifically flagged 2 areas where a call is likely to be very useful.

Please contact David Friedlander ((02) 9296 2444) or Amanda Isouard ((02) 9296 2898) in the first instance.

Yours sincerely



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Annexure – KWM submissions

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Proposed ASX Listing Rule reforms – KWM submissions

This table sets out King & Wood Mallesons ("**KWM**") submissions on ASX Limited's ("**ASX**") public consultation paper on simplifying, clarifying and enhancing the integrity and efficiency of the ASX listing rules dated 28 November 2018.

#	ASX change	KWM responses
2. Improving market disclosures and other market integrity measures		
2.1	**Quarterly reporting** – enhancing the quarterly reporting regime. ASX is keen to receive feedback on the changes to the quarterly reporting regime proposed above. Do stakeholders support the concept of requiring rule 4.7B quarterly reporters to lodge quarterly activities reports? Are the proposed informational requirements for quarterly activity reports in the new rule 4.7C and in the amendments to rule 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?	KWM is supportive of this proposal. There is a balance to be struck between the usefulness of the information to investors as against the burden and cost of requiring this information to be produced. In our view, the proposed changes strike the right balance.
2.4	**Disclosure of closing dates for the receipt of director nominations –** fixing issues with the drafting of rule 3.13.1. ASX is keen to receive feedback on the changes to rule 3.13.1 proposed above. Do stakeholders agree that listed entities should disclose the closing date for the receipt of director nominations to the market? Will this requirement be burdensome to comply with? Might there be any unintended consequences if these changes are adopted?	KWM believes that this is a sensible suggestion and that it will not be burdensome to comply with. Given that failure to provide the relevant notice does not invalidate a meeting or election we do not believe that unintended consequences will arise if the changes are adopted.
2.5	**Disclosure of voting results at meetings of security holders –** amending rule 3.13.2 to standardise the disclosure of voting results at meetings of security holders. ASX is keen to receive feedback on the changes to rule 3.13.2 proposed above. Are they appropriate, in terms of their reach and content? Will they be burdensome to comply with? Might there be any unintended consequences if they are adopted?	KWM is supportive of the change. The standardisation and amendments are in line with the level of detail that large entities currently prepare when disclosing the results of securityholder meetings. There was one point that we wanted to raise for consideration. We note that time is of the essence in terms of reporting meeting voting results. We suggest a 2 tier process be adopted whereby entities have the option to either:

		• release all of their voting results immediately to ASX; or • release their voting results in 2 stages to ASX, with the more basic information being released immediately and then having 2 business days to release the more detailed information. This second option may be particularly important in circumstances where an entity wants to complete a thorough review of voting results before releasing to the market.
2.6	**Disclosure of underwriting agreements –** amending various rules to achieve consistent disclosure of the key features of underwriting agreements, including the name of the underwriter, the extent of the underwriting, the fee or commission payable, and a summary of the material circumstances where the underwriter has the right to avoid or change its obligations. ASX is keen to receive feedback on the changes to the disclosures required in relation to underwriting arrangements proposed above. Are they appropriate, in terms of their reach and content? Will they be burdensome to comply with? Might there be any unintended consequences if they are adopted?	KWM is supportive of these changes, as most of this information is commonly included in disclosure materials and is similar to the information that ASIC states should be included in prospectuses (ASIC RG 228). However, KWM submits that these changes should be aligned with ASIC's requirements under RG 228.166 – in particular, that *"a summary of the material circumstances where the underwriter has the right to avoid or change its obligations"* should be amended to read *"any significant termination rights"*. This will: • still achieve ASX's desired objective of summarising the key termination events; • ensure consistency across the regulatory requirements; • prevent any misinterpretation that conditions precedent and other provisions need to be summarised; and • prevent any negative connotations from the use of the phrasing *"avoid or change"*, particularly given that termination of an underwriting agreement is in our experience incredibly rare.
2.7	**Good fame and character –** expanding 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.	KWM is supportive of this proposal. We believe that it is as important that the CEO be of good fame and character as it is that directors satisfy this requirement. We note that entities seeking admission will already need to go through this process in relation to directors and proposed directors and that, in many cases, the CEO will also be a director of the entity seeking admission. In light of this and the examples that ASX has recently cited of individuals involved in the management of companies seeking admission not joining the board in order to avoid the ASX's good fame and character requirements, we do not think that the proposal imposes a significant

		additional burden on entities seeking admission.
2.8	**Persons responsible for communication with ASX on listing rule issues –** improving listing rule compliance by requiring the persons appointed by listed entities to be responsible for communication with ASX on listing rule issues to have demonstrated an adequate level of knowledge of the listing rules. ASX is keen to receive feedback on the educational requirements proposed above for persons appointed on or after 1 July 2019 to be responsible for communication with ASX on listing rule issues. 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?	KWM is supportive of this proposal. However, we note that that although entities may appoint one or more persons as being responsible for communications with ASX in relation to listing rule matters, in our experience most entities currently only appoint a single person to this role. If that person were to leave the entity suddenly, this would result in the entity being in technical breach of the listing rules if no other suitable candidates for the position have completed the course. We suggest that ASX consider amending the proposals so that a person appointed to the role must complete the course within a certain time period of their appointment (say within 2 months of their appointment). We note it is proposed that persons appointed to be responsible for communications with ASX on listing rule matters prior to 1 July 2019 will be grandfathered from this requirement. We suggest that ASX consider whether this grandfathering concept should be extended so that if a person has fulfilled this role at an ASX listed entity prior to 1 July 2019, they could be appointed to carry out that role for a different entity post 1 July 2019 without the need to complete the examination. We also suggest that ASX consider whether the proposed educational requirements are suitable for those entities which have a secondary listing on ASX where there may be a number of waivers in place which exempt the entity from the operation of a number of the listing rules proposed to be covered by the educational course. In those cases, we suggest that rather than requiring the completion of an educational course being the default option it may be more appropriate for ASX to be given the discretion to require the completion of an educational course if ASX is not satisfied with the arrangements that the entity has put in place to ensure compliance with applicable listing rules.

2.9	**Voting by employee incentive schemes** – adding a new rule 14.10 providing that securities held by or for an employee incentive scheme must only be voted on a resolution under the listing rules if and to the extent that they are held for the benefit of a nominated participant in the scheme who is not excluded from voting on the resolution under the listing rules and who has directed how the securities are to be voted. ASX is keen to receive feedback on the voting restrictions proposed in new rule 14.10 for securities held by or for an employee incentive scheme. Are they appropriate, in terms of their reach and content? Will they be burdensome to comply with? Might there be any unintended consequences if they are adopted?	KWM is supportive of this proposed new restriction and does not believe it will be burdensome for entities to comply with. Any listed entity that relies on the relief provided by ASIC Class Order [CO14/1000] to make their employee incentive scheme offers is already complying with an equivalent restriction.
3. Making the rules simpler and easier to follow		
3.1	**Announcing issues of securities and seeking their quotation** – simplifying and rationalising the current process for announcing issues of securities and applying for their quotation. This involves changes to existing rules 2.7, 2.8 and 3.10.3 and Appendix 3B; the replacement of rule 3.10.5; and the introduction of new rules 3.10.3A, 3.10.3B and 3.10.3C and a new Appendix 2A.	KWM is supportive of the proposed amendments. However, we note that the section 707(3) warranty is required to be given under both the Appendices 2A and 3B (the same warranty is also required under Appendices 1A, 1B and 1C). In our view, it is more appropriate for: • this warranty to be given at the time of filing the Appendix 2A once the number of securities to be issued are known and the market has been cleansed (and not at the time of the filing of the Appendix 3B); and • the wording to be revised from: *"We warrant to ASX that…An offer of the securities for sale within 12 months after their issue will not require disclosure under section 707(3) or section 1012C(6) of the Corporations Act."* to: *"We warrant to ASX that…the entity has conducted the issue and taken all reasonable steps to ensure either that the securities are tradeable free of any limitation under section 707(3) or section 1012C(6) of the Corporations Act or appropriate arrangements have been otherwise directly agreed with the allottee(s)*." The issue with the existing language is that it assumes that all securities are freely tradeable as and from the time of issue.

		However, sections 707(3) and 1012C(6) do not operate in that way. Specifically, they apply to resales within 12 months of issue to retail investors. Entities can make direct arrangements with recipients of securities to the effect that there will be no re-sale within 12 months or that the securities will only be traded amongst institutional investors for that period. This is extremely common in global securities issues and we regularly see it in Australia. In our view this revised formulation: • would give entities and allottees additional flexibility; • recognises that certain institutional securityholders may be comfortable to receive an allotment of securities and not trade them for 12 months. As mentioned, we sometimes see entities requesting comfort from allottees that this will be the case (e.g. through warranties confirming that the allottee will not dispose of the securities for 12 months except by offers that do not need disclosure); • recognises that other institutional securityholders may agree only to transfer the securities to other securityholders that have the benefit of a section 708 exemption (and so on); and • also recognises that some entities and institutional securityholders may agree that a subsequent on-sale within 12 months will be accompanied by the requisite disclosure to investors. Given this, we submit that ASX amend the warranty as proposed above. We also submit that this warranty in other forms (e.g. Appendices 1A, 1B and 1C) also should be amended in this manner. In addition, we also welcome clarity in relation to announcing issues of securities and applying for their quotation. In relation to rule 2.8, it would be helpful if the timing for lodgement of applications for ASX Debt Listings under rule 1.9 could be stated (i.e. the timing for lodgement of an Appendix 1B under rule 1.9 needs to be made clear – otherwise rule 2.8.7 could apply to ASX Debt Listings). We expect that the timing for lodgement of an Appendix 1B should be on or prior to

		the issue date for the debt securities. We note that under rule 2.7, ASX has explained that if following lodgement of an Appendix 1B there is a change in the number of securities to be quoted, then the applicant must give ASX a completed Appendix 2A *"by no later than midday (Sydney time) at least one business day prior to the intended date for quotation of the securities"*. So in our view timing for lodgement of the Appendix 1B should be stated as well. In relation to rule 3.10.3, we note the following: • that rule 3.10.5 will now only apply to equity securities (i.e. that an issuance of debt securities will not need to be announced); and • rule 3.10.3 will be amended so that proposed issuances of all securities (other than an issue to be made under a dividend or distribution plan or an employee incentive scheme or as a consequence of the conversion of any convertible securities) must be made to ASX on an Appendix 3B. We interpret the amended rule 3.10.3 to mean that a listed entity must announce proposed issues of all debt securities (i.e. whether or not they are to be quoted on ASX). This means, for instance, that listed entities who are frequent issuers of debt securities (including, in the case of banks and insurers, Tier 2 Capital securities) to wholesale investors in domestic and offshore markets would be required to announce every issuance once an agreement is reached to do so (i.e. following execution of the relevant subscription or purchase agreement in relation to the debt securities). We understand that many issuers have not to date generally made announcements of that nature because their understanding has been that ASX has not required those announcements under rule 3.10.3. We submit that rule 3.10.3 should not apply to "business as usual" issuances of debt securities (including Tier 2 Capital securities) to domestic and offshore investors in the ordinary course of the issuer's business (unless those debt securities are listed on ASX or where they are offered under a prospectus or PDS in accordance with the relevant disclosure requirements under the Corporations Act 2001 (Cth) ("**Corporations Act**")). We also note the addition of rule 3.22 (which would require entities to notify ASX "immediately it decides to pay interest on a debt security or

		convertible debt security or makes a decision that interest will not be paid…"). Is this intended to mean that entities are required to make an announcement (using Appendix 3A.2) in relation to every interest payment on every ASX-listed debt security and convertible debt security? The terms of the securities generally contain a contractual obligation to pay interest on interest payment dates, so technically, an entity does not make a decision to pay interest on each interest payment date. There are some debt securities which give the entity the option not to pay interest in certain circumstances, and notification to holders would be given in any event (if the option were to be exercised). It would be helpful if ASX could clarify when (and to which securities) rule 3.22 is intended to apply.
3.4	**The additional 10% placement capacity in rule 7.1A** – implementing the changes foreshadowed in *Strengthening Australia's equity capital markets: ASX Listing Rule 7.1A after three years* and some other changes to simplify and rationalise aspects of rule 7.1A.	KWM is supportive of these amendments, but would suggest ASX: • clarify that in the new rule 7.1A.1 that the new limb (b) only applies if a rule 7.1A mandate resolution is rejected by securityholders at that AGM. Without this change, entities may be deprived of the 12 month period even if a 7.1A resolution is not proposed at a subsequent AGM; and • reconsider whether it is necessary to remove the ability of entities to make an issue under their additional 10% placement capacity in rule 7.1A for non-cash consideration. The rationale for the change cites that it seldom used and creates significant compliance issues, but removing it also removes flexibility for listed entities. We appreciate that ASX may in appropriate circumstances grant relief to facilitate this but feel that a better protection would be a simple requirement that non-cash issues need ASX consent but not a waiver (thereby providing a more streamlined route to these types of offerings).
3.7	**Employee incentive schemes** – rationalising the rules dealing with the approval of issues to directors and their associates under employee incentive schemes by merging rules 10.15 and 10.15A into the one rule (rule 10.15). The new rule 10.15 will be substantially based on rule 10.15A, but with some additional changes to clarify its intended operation and to make it consistent with rules 7.3, 7.5 and 10.13. This includes some re-ordering of the provisions. ASX is keen to receive feedback on the changes to rule 10.15 proposed	Given that the changes largely reflect the existing rule 10.15A, KWM does not consider that these would be overly burdensome to comply with. However, we suggest that further clarification is included in the rule or in related GN 25 on what constitutes a director's current total remuneration package, for instance that this is limited to salary, STI and LTI.

	above. Are they appropriate, in terms of their reach and content? Will they be burdensome to comply with? Might there be any unintended consequences if they are adopted?	
3.8	**Voting exclusions** – amending the list of voting exclusions in the table in rule 14.11.1 for greater consistency and to give greater certainty as to which parties must have their votes excluded. ASX is keen to receive feedback on the changes to voting exclusions proposed above. Are they appropriate, in terms of their reach and content? Will they be burdensome to comply with? Might there be any unintended consequences if they are adopted?	KWM is generally supported of the proposed amendments to the voting exclusion table – particularly in respect of rule 7.1A We do not expect that the inclusion of persons who will obtain a material benefit in the exclusions for rules 10.1 and 11.4 will be burdensome or difficult to comply with, and the proposed amendment is consistent with the existing exclusions for rules 7.1, 11.1 and 11.2.
4. Efficiency measures		
4.1	**Escrow** – streamlining the escrow regime in chapter 9 and Appendices 9A and 9B to substantially reduce the administrative burden for applicants seeking to list on ASX and for ASX. ASX is keen to receive feedback on the changes to the escrow regime proposed above. Do stakeholders support simplifying the escrow regime? Will the changes reduce the workload currently involved in obtaining escrow agreements from all holders of restricted securities? Are there any other changes ASX could sensibly make to reduce the burden of the escrow requirements and still maintain the integrity of its escrow regime?	KWM is supportive of the proposed amendments to chapter 9 and Appendices 9A, 9B and new 9C, as well the revised GN 11. We put the following forward for ASX's consideration: • ASX currently requires that an entity notify it that restricted securities or securities subject to voluntary escrow will be released from escrow not less than 10 business days before the end of the escrow period (rule 3.10A). Some voluntary escrow arrangements include an early release mechanism if certain thresholds are met (e.g. 10 day VWAP is a certain percentage about the IPO price). All escrow arrangements include a final release date. In each of these circumstances, the criteria and timing for release has been published on ASX well in advance (e.g. in the IPO prospectus). Given this, we propose that the ASX 10 business day notification requirement should be deleted. The rule can be inadvertently overlooked by entities which then subjects the relevant securityholder's securities to an additional restriction period through no fault of their own. In addition, it is impractical in the context of securities which may be subject to an early release mechanism as the date of release will not necessarily be known 10 business days in advance.

		If ASX is not inclined to make that deletion, then we request that ASX amend rule 3.10A to allow the 10 business day notification to be made 10 business days in advance of the *earliest possible time* for release of the relevant escrowed securities so that escrowed holders are not held back from selling their securities once an early release threshold has been met. This will assist in avoiding situations where a securityholder is unable to dispose of its securities just after results are issued or because a trading window has closed due to a delay in meeting the early release thresholds and then having to account for an additional 10 business days. • GN 11 notes that one of the mandatory escrow exceptions for an entity seeking admission under the "assets test" is that it has an acceptable track record of profitability or revenue. We assume it is based on pro forma accounts, rather than statutory, given that the latter is often not meaningful due to pre-IPO restructures etc. Obviously, ASX would retain discretions to deal with inappropriate pro forma adjustments in this context. It would be helpful if ASX could please update GN 11 to make this clear. • We note for mandatory escrow that ASX has prescribed 24 month and 12 month periods, with the longer period being for related parties, promoters and quasi-promoters given they are usually likely to have a bigger economic stake in, and have a closer and deeper understanding of the underlying value of, the undertaking being listed than other unrelated securityholders. In the voluntary escrow arrangements that we have seen, the restricted period is usually based on the forecast period and 1 full audit cycle. This is so the relevant parties have "skin in the game" long enough to be accountable. The relevance of the voluntary escrow conventions is that it demonstrates the way the market thinks about the issue. As ASX is revisiting escrow requirements, we would ask that thought be given by ASX as to whether it would be appropriate for ASX to use these periods rather than the 12 and 24 months periods. • Since the ACCC recently bought criminal cartel actions against certain parties, we have been considering how a sell-down of

		securities recently released from escrow can be managed in circumstances where there are multiple escrowed securityholders that hold in aggregate a significant stake in the entity. Orderly markets at the time of escrow release where there are multiple holders are in our view essential. However, there is a risk that the escrowed securityholders will try and frontrun each other, that bookbuild participants in post-escrow block trades have no confidence in the extent of what may be "coming out" next in the case of partial sales and that the extent of market overhang will not be known if the holders cannot in some way aggregate their efforts. All of these risks are likely to be to the detriment of the entity's share price and therefore other securityholders and may impact IPOs adversely. In our view, the preferable structure is for the escrowed securityholders to have the option to sell-down as a block together at the time of the release from escrow, with any escrowed securityholders who choose not to participate being locked up for the next 60 or 90 days. However, there is some uncertainty regarding these proposed arrangements given the cartel action. Our suggestion is that ASX work with entities to help manage any sell-down and to apply a holding lock to any of the escrowed securityholders who choose not to participate in the initial sell-down. In addition, we also suggest that the revised GN 11 makes a definitive statement on the importance of an orderly market at the time of entry into the escrow arrangements and at escrow release. This is similar to the statement made by ASIC in RG 5 that: *"an entity will commonly enter into escrow arrangements with certain existing security holders in support of a public offering of securities. This may promote investor confidence and an orderly market…Listing rule escrow is designed to align (a) the interests of [certain parties]…and (b) the interests of other holders…The escrow arrangements may promote an orderly market in the securities by preventing a sell-down of a substantial number of securities immediately after the securities are issued."* (paragraphs

		244, 252-255). The draft revised GN 11 already states in respect of voluntary escrow: *"Voluntary escrow is sometimes offered up in a new or re-compliance listing by a founder or promoter with a substantial holding to make the listing more attractive to investors. It serves to demonstrate their continuing commitment to the entity and to remove concerns about their holdings "overhanging" the post-listing market. It is also sometimes demanded by underwriters, lead managers or cornerstone investors as a condition of their involvement in a new or re-compliance listing."* In our view, ASX should add some additional wording near the start of GN 11 to emphasis this and to cover escrow release. Our proposed wording is as follows: *"ASX recognises the importance of escrow arrangements in promoting investor confidence and an orderly market for securities. Escrow arrangements assist in aligning the interests of escrowed securityholders with other securityholders, demonstrate the escrowed securityholders continuing commitment to the entity and removes concerns about their holdings overhanging the aftermarket. It is for these reasons that ASX considers that escrow arrangements are reasonably necessary to implement a new or re-compliance listing.* *ASX also recognises that similar investor confidence and orderly market concerns arise in the lead up to securities being released from escrow. This is because there is a risk that the escrowed securityholders will try and frontrun each other, that bookbuild participants in post-escrow block trades have no confidence in the extent of what may be "coming out" next in the case of partial sales and that the extent of market overhang will not be known if the escrowed securityholders cannot in some way aggregate their efforts. ASX notes that it may be appropriate in some circumstances for multiple escrowed securityholders to enter into arrangements jointly to selldown their released securities (with non-participating released securities being locked up for a period*

		of time) in order to promote investor confidence and maintain an orderly market." We would be happy to set up a call with ASX to provide more colour to this suggestion if that would be helpful.
4.2	**Notification by profit test entities of continuing profits** – amending rule 1.2.5A to allow the statement required from the directors of a 'profit test' listing that they have made enquiries and nothing has come to their attention to suggest that the economic entity is not continuing to earn profit from continuing operations, to be included in the entity's listing prospectus, PDS or information memorandum, rather than having to be provided separately to ASX.	KWM expects that, despite the proposed amendment, most entities will continue separately to provide the required confirmation to ASX, rather than electing to include it in their prospectus, PDS or information memorandum.
4.3	**Agreements for admission and quotation** – separating the application forms for admission to the official list in existing Appendices 1A, 1B and 1C from the formal listing agreements included in those Appendices.	KWM submits that it would be extremely helpful if Appendix 1B is amended to make clear that although it is the trustee that applies for the debt listing, the entity that will be included in the ASX Official List is the trust and not the trustee. This is an important distinction as it impacts on whether the relevant entity will fall under the definition of "disclosing entity" under the Corporations Act and therefore would be required to prepare half year reports under the Corporations Act. While it is clear that under the ASX listing rules half year reports do not have to be provided to ASX in respect of debt listings, if the trustee (as opposed to the trust) is included in the ASX Official List or mistakenly interpreted as being on the ASX Official List, the requirement to prepare half year reports may be triggered under the Corporations Act. We are aware of instances where uncertainty has been created because of this lack of clarity.
5. Updating the timetables for corporate actions		
5.6	**Opening date of an issue to existing security holders** – re-drafting and shifting into rule 7.10 the requirement that currently appears in section 1 of Appendix 7A that the 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 the disclosure document or PDS is sent to them,	We ask ASX to consider that in the case of an absolutely vanilla deal (e.g. an entitlement offer that strictly follows a timetable provided for in Appendix 7A), that ASX not require that the timetable be reviewed in advance and that a trading halt should be automatically granted provided that Exchange

	unless the disclosure document or PDS is lodged with ASIC and given to ASX at least 7 days before the opening date.	Traded Offer maturity dates were unaffected. Our experience has been that timetables are always confirmed and trading halts always granted for entitlement offers. This means that ASX is unnecessarily having to undertake procedural actions for each relevant capital raising. The risk of a timetable error not being picked up until post-launch could be mitigated if ASX provided a smart form timetable that entities could enter dates into and receive an automatic response. This would help free ASX's time up to focus on other matters and would facilitate capital raisings that need to move quickly to launch in a condensed timeframe (e.g. over a long weekend).
5.14	**Deferred settlement trading** – the CHESS Replacement Settlement Enhancements Working Group recently requested that ASX consider shortening and standardising the timeframes for deferred settlement trading markets, and removing conventions for deferred settlement trading where they are no longer relevant. ASX is keen to receive feedback from stakeholders, including listed entities, investors, brokers and corporate advisers, on: • 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.	KWM requests confirmation that deferred settlement trading will be kept for initial public offerings, scrip schemes, [spin-offs] and certain bespoke transactions.
6. Monitoring and enforcing compliance with the listing rules		
6.3	**Powers and discretions** – adding a new rule 18.5A to make it clear that ASX can exercise, or decide not to exercise, any power or discretion conferred under the listing rules in relation to an entity in its absolute discretion. The new rule will also make it clear that ASX may do so on conditions and, if it does, the entity must comply with the conditions.	KWM is supportive of the addition of new rule 18.5A. We note that there does seem to be general overlap between this rule and the proposed change to rule 18.5, which could be addressed in the drafting, for example by replacing rule 18.5 with an expanded rule 18.5A that states "ASX may exercise, or decide not to exercise (including by taking no action in response to a breach by an entity of a listing rule or a condition imposed

		under the listing rules), any power or discretion conferred under the listing rules in relation to an entity in its absolute discretion. It may do so on any conditions and, if it does so, the entity must comply with the conditions" (or similar). If ASX takes no action, it is not a waiver of the rule".
6.5	**Compliance requirements** – amending rule 18.8 to list specific examples of the types of requirements ASX may impose on a listed entity under that rule to ensure compliance with the listing rules.	Except as noted below in relation to proposed rule 18.8(c)-(d) and 18.8(k)-(m), KWM is supportive of the proposed change to rule 18.8. In particular, KWM is supportive of ASX requiring an entity to do or not to do the matters referred to in proposed rule 18.8(a)-(b) and 18.8(e)-(j). In relation to proposed rule 18.8(c)-(d), KWM would suggest that ASX consider the potential impact on listed entities, market participants and contractual counterparties more broadly of requiring an entity to cancel or reverse an agreement or transaction (proposed rule 18.8(d)), or to not perform an agreement or transaction (proposed rule 18.8(c)), and whether ASX should exercise discretion to require an entity to in that manner. Of course, whether it is appropriate for ASX to require an entity to do (or refrain from doing) these acts will depend on the circumstances, however KWM notes that the stock exchanges of London, Hong Kong, Shanghai, Shenzhen and Singapore do not have an equivalent express power. Unless these are linked to the rules (as proposed in the new proposed rule 18.8(f), for example, which states "to include specified information in a notice of meeting proposing a resolution under these rules"), further thought may need to be given to the legal basis of the powers proposed to be expressed in proposed rule 18.8(c)-(d). In relation to proposed rule 18.8(k)-(m) (which relate to introducing or updating compliance policies and processes, reviewing compliance policies and processes and causing officers or employees to undertake a compliance education program), KWM would suggest that these powers should again be linked to the rules (as proposed in the new proposed rule 18.8(f), for example). KWM would be concerned if ASX sought to require a listed entity to introduce a compliance process (for example) in relation to an area of law or practice regulated by another body (such as ASIC or APRA), in duplication or overlap with the compliance required by another regulator.
6.6	**Censures** – adding a new rule 18.8A giving ASX the power to formally censure a listed entity that breaches the listing rules, or a condition imposed under the listing rules, and to publish the censure and the	KWM is supportive of the addition of new rule 18.8A. KWM acknowledges that this new power is consistent with the power of the

	reasons for it to the market.	stock exchanges of London, Hong Kong, Shanghai, Shenzhen, Singapore and Johannesburg to publicly censure or reprimand a listed entity or other person, however notes that in some cases the rules of those exchanges contemplate a decision of a disciplinary (or similar) committee being made prior to the censure. KWM recommends that ASX provide guidance on: • the types of "egregious" breaches that may cause ASX publicly to censure a listed entity; and • any process ASX would adopt before deciding whether to exercise its power under new rule 18.8A.
7. Correcting gaps or errors in the listing rules		
7.8	**Voting exclusions** – removing the reference in rule 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.	KWM considers that the proposed amendment may inadvertently remove the ability for the chair to vote undirected proxies in respect of certain remuneration-related resolutions, even where the chair has an express authority to do so (and is therefore permitted to vote under section 250BD of the Corporations Act) – e.g. a resolution under Listing Rule 10.11 or 10.17. We have suggested the following drafting amendments in italics and underline in addition to the suggested revised wording provided by ASX in the consultation: **Voting exclusion statement** The entity will disregard any votes cast in favour of the resolution by or on behalf of: ▪ the (named) person (or class of persons) excluded from voting; or ▪ an associate of that person (or those persons). This does not apply to a vote cast as proxy or attorney for another person who is entitled to vote on the resolution, in accordance with directions given to the proxy or attorney to vote in favour of the resolution*, or to a vote cast by the chair of the meeting as proxy or attorney for another person who is entitled to vote on the resolution if the appointment expressly*

		authorises the chair to exercise the vote. It also does not apply to a vote cast by a holder acting solely in a nominee, trustee, custodial or other fiduciary capacity on behalf of a beneficiary provided the following conditions are met: ▪ the beneficiary provides written confirmation to the holder that they are not excluded from voting, and are not an associate of a person excluded from voting, on the resolution; and ▪ the holder votes on the resolution in accordance with directions given by the beneficiary to the holder to vote in favour of the resolution.
7.14	**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 investment schemes.	We have no specific comments on the proposed changes to the definition of related party in so far as they apply to trusts and managed investment schemes. In our experience, the proposed changes reflect the way the industry has generally applied this definition to date.
7.15	**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 for quotation of securities.	Subject to the comments below, KWM is supportive of this proposal. In relation to the proposed inclusion in Appendix 1A, 1B and 1C of an authorisation to allow ASX to disclose to any third party all information that has been provided to ASX in connection with the listing, we suggest that this authorisation is framed too broadly and would allow ASX to disclose information that the entity considers to be confidential or commercially sensitive information to third parties without prior consultation with the entity. This may create a disincentive for entities seeking admission to provide full and frank disclosure to ASX. This risk is made more acute by the greater level of information that ASX is requiring in connection with new listings, particularly in relation to those entities which ASX considers to be higher risk (e.g. tech start-ups). In relation to the proposed inclusion in Appendix 1A, 1B and 1C of an authorisation for third parties to provide ASX with any information relating to the entity seeking admission or its employees, officers or agents, we question the legal effectiveness of the entity giving this authorisation on behalf of all of its employees, officers and agents. We suggest that ASX consider whether this authorisation could be narrowed so that it applies to information relating to the entity, its directors, CEO and company secretary. It would be more practicable for an entity to seek consent for giving that

		authorisation from this narrower pool of people. In relation to all of these forms, we note the proposed warranty given by the entity on lodgement that the information given in connection with the admission of the entity or the quotation of securities is or will be "accurate, complete and not misleading". KWM suggests that ASX considers adopting an approach similar to ASIC's Email Lodgement Service Terms and Conditions. Under those terms, the person who makes the lodgement agrees to "provide information that is complete, true and accurate, to the best of their knowledge" – this assists with the delineation between the liability of the entity and the liability of the individual who lodges the relevant document.
8. General drafting improvements		
8.1	In addition to the changes mentioned above, ASX is proposing a number of minor drafting changes to the listing rules to improve their clarity.	KWM is supportive of the proposed drafting changes.
9. New and amended guidance		
9.2	GN 11 *Restricted Securities and Voluntary Escrow*	See row 4.1.
9.3	GN 12 *Significant Changes to Activities*	Subject to the comments above, KWM is generally supportive of the proposed amendments to GN 12.
9.4	GN 13 *Spin-outs of Major Assets*	KWM wishes particularly to acknowledge the enhancements to this guidance note. It takes the discussion to a significantly higher level than the previous one and is certain to improve awareness in the market of the drivers for ASX in this area. Specifically, the examination of different forms of spin-out will be helpful to listed entities and their advisers. Our only comment is in section 3.2 where a 25% threshold is used, measured against particular metrics that are the same as those used in guidance to rule 11.1. In that section, we suggest that it be made clearer that this is the threshold at which discussions with ASX are required, rather than (as presently drafted) it would be felt that the requirement for a pro

		rata offering or securityholder approval exists. This would not only align better with the rule 11.1 guidance, it would operate more efficiently where, for example, there are short term blips in one of the metrics and therefore the 25% is triggered inappropriately. We feel that there is a danger in the current formulation because it would empower external parties to point to one-off triggers or other abnormal results where ASX would not generally see rule 11.4 as having been triggered. While ASX can grant a waiver, it would be better to have broader ASX discretion.
9.5	GN 21 *The Restrictions on Issuing Equity Securities in Chapter 7 of the Listing Rules* ASX is keen to receive feedback on this proposed guidance. Do stakeholders agree with the guidance? Will complying with the guidance be burdensome? Might there be any unintended consequences if ASX adopts the guidance?	KWM is supportive of new GN 21. In particular, KWM welcomes ASX's guidance regarding the treatment of convertible security issues (and worked examples) when calculating an entity's placement capacity, which will be useful to issuers of hybrid securities that contain a conversion formula linked to a measure of market price, or more than 1 conversion formulae. KWM suggests that: • in the circumstances where an Appendix 2A or 3B worksheet must be submitted to an ASX Listings Compliance officer to confirm available placement capacity, ASX provide guidance as to the applicable review times so that these can be factored into the issuer's timetables (sections 2.10 and 8 of GN 21); and • in relation to rule 7.2 – exception 13 (approved issues under employee incentive schemes), ASX provide guidance (including by way of examples) as to what types of amendments ASX considers comprise a *"material"* change to the terms of the scheme which will require fresh approval by securityholders as an exception under rule 7.2 (section 4.13).
9.6	GN 24 *Acquisitions and Disposals of Substantial Assets Involving Persons in a Position of Influence* ASX would welcome feedback on the policy position above, the appropriateness of the waivers referred to in sections 8.2 – 8.4 of GN 24 and whether there are any other specific cases where ASX should	KWM is supportive of the revisions to GN 24. KWM notes the following: • as Chapter 2E also has an "arms' length" exception it is not necessary to align the $5,000 de minimus threshold with the small benefits exception in Chapter 2E. We suggest using a higher de minimus threshold such as $50,000 (section 3.2 of GN 24); and

	consider granting a waiver of rule 10.1.	• it would be helpful if a waiver for granting security would allow a change that does not *"materially benefit the 10.1 party"* (section 8.4 of GN 24). In addition, we understand ASX has made a broader change in policy that it will no longer issue waivers from rule 10.1 to listed trusts or fund managers, relieving them from the obligation to obtain securityholder approval for the transfer of significant assets to/from listed trusts from/to other funds or mandates managed by the responsible entity of that listed trust. We note that those waivers would typically include conditions that the responsible entity procure an independent valuation of the relevant assets being transferred and that related parties of the listed entity did not hold a significant stake in the unlisted entity to/from which the assets were being sold. We do not agree with ASX's change in position regarding the issuance of these waivers. We consider that granting the waiver remains an appropriate course of action where: • the relevant responsible entity owes significant fiduciary duties to the listed unitholder, reducing the possibility of a conflict of interest; • there is no cross-holding between significant investors in the listed entity and the fund (so that the waiver cannot be used to avoid the usual operation of rule 10.1 on significant investors); and • there is no possibility for shifting value away from the listed fund, given that any transfer has to be supported by an independent valuation. This change in policy has already had, and is likely to continue to have, a significant impact on fund managers and listed trusts who also operate unlisted funds. We submit that there is no reason why listed trusts or fund managers should not be able to sell assets to an unlisted fund managed by the same responsible entity where those sales are subject to the terms of the previously issued waivers. Many listed fund managers and trusts warehouse significant assets ahead of selling them to unlisted funds. This comprises a significant part of their business model. Requiring those trusts to seek approval now makes warehousing risky and, in many

		circumstances, impractical. We are happy to have a call with ASX to discuss this in more detail, as this is an important issue that needs to be resolved.
9.7	GN 25 *Issues of Equity Securities to Persons in a Position of Influence* ASX would welcome feedback on the policy position above and whether there are any specific cases where ASX should consider granting a waiver of rule 10.11. ASX would also welcome feedback on the policy positions above and whether there are any specific cases where ASX should consider granting a waiver of rule 10.14.	KWM is supportive of the revisions to GN 25. KWM notes the following: • 3.2: we suggest that related parties are allowed to participate in a shortfall facility for a pro rata offer up to a sensible cap. This will allow more funds to be raised when needed, but still maintain the integrity of the exception (section 3.2 of GN 25); • we suggest that an acceptable market fall percentage is outlined here (section 3.3 of GN 25); and • this should clarify whether the jurisdictions in footnote 60 are acceptable (as is provided in ASIC relief) (section 3.6 of GN 25).
9.8	GN 33 *Removal of Entities from the ASX Official List* ASX would welcome feedback on the proposed changes to GN 33.	KWM is supportive of the proposed changes to GN 33, and discusses its consideration of each proposed change in more detail below. KWM is supportive of the proposed changes to sections 2.1 to 2.6, 2.8-2.10 and 2.12-2.15 (inclusive). In respect of section 2.7 of GN 33, KWM is supportive of ASX clarifying the cases in which voting exclusions may apply when securityholders vote on a removal resolution, subject to the following comments: • footnote 35 indicates that directors and senior managers would generally be considered to have a material informational advantage – KWM is supportive of security holders who will have a material informational advantage from being excluded from voting however, given this is a relatively new concept and the market will develop in relation to it, queries whether ASX should start by indicating that directors, the CEO and CFO of the listed entity will generally have a material informational advantage, and that ASX may expand the application of this voting exclusion over time. In particular, KWM: • considers that the example of "senior managers" may be open to interpretation; and

		• queries whether there may be other categories of security holders who have a material informational advantage arising from their rights under an agreement with the entity – KWM considers that these categories may emerge as this concept of a "material informational advantage" matures; and • it would be helpful if an example could be provided of those that may be subject to a voting exclusion due to a concern they are likely to obtain another material benefit (or the circumstances that may give rise to that type of benefit). KWM also notes that there could be greater consistency regarding the need to make (and communicate) what, if any, arrangements will be in place to enable securityholders to sell or otherwise realise their securities in the lead up to, and after, an entity's removal from the official list (see for example, section 2.2 cf section 2.7(b)), particularly in circumstances in which some entities and industry participants are concerned about "grey markets" and whether certain proposed post-delisting arrangements may be regulated. KWM queries whether there should be a distinction between removing an entity from the official list which has (i) ordinary shares and (ii) a class or classes of securities other than ordinary shares ("non-ordinary shares") that would influence ASX to impose a condition that the removal not take place for a minimum period if there are non-ordinary shares (but not impose the condition if there are only ordinary shares). If ASX considers that it may impose conditions that the removal not take place for a minimum period where an entity has only ordinary shares, ASX may wish to consider repeating the paragraph in section 2.8 of GN 33 in section 2.7 of GN 33. In respect of section 2.11 of GN 33, KWM is supportive of ASX adopting a more prescriptive approach to the matters that are required to be included in a notice of meeting fully and fairly to inform security holders. However, KWM considers that ASX should consider whether an explanation of oppression remedies (noting that we assume the reference to Part 2.1 of the Corporations Act should be a reference to Part 2F.1 of the Corporations Act) should be included in the notice. KWM considers that

		this may give undue weight to statutory oppression (in circumstances where shareholders have other rights and remedies that are not explained and where oppression has almost never been ordered in a similar context) and may tend to a more litigious approach to delisting (which we assume ASX would not wish to encourage). In respect of section 3.2 of GN 33, KWM notes that ASX proposes to amend the reference to "simply failing" to pay an annual listing fee to "refusing" to pay an annual list fee. KWM queries whether ASX is making a distinction between an entity that is incapable (e.g. due to its cash position) of paying its annual listing fee and an entity that wilfully determines not to pay its annual listing fee. If ASX is not proposing to draw that distinction, KWM would suggest that the language regarding "failing" to pay an annual listing fee remain. KWM is supportive of the proposed changes to sections 3.3, 3.4 and 5 of GN 33 (including the proposed changes to the time periods for automatic removal).
10. Accompanying documents		
10	ASX is keen to receive feedback on the contents of the proto-type Appendix 2A, 3B and 4A forms included in Annexures K, L and M respectively, including in particular the requirement mentioned above for any entity relying on its placement capacity under rule 7.1 or 7.1A to make an issue of equity securities without security holder approval to complete the applicable worksheet and send it to ASX. Will this requirement be burdensome to comply with? Might there be any unintended consequences if it is adopted?	We are supportive of the proposed interactive nature of the proto-type Appendix 3B and note that this feature is a helpful addition. We have no comments regarding Appendices 2A or 4A other than as otherwise set out in this submission. KWM welcomes ASX reviewing the placement capacity worksheet in the specified scenarios, but suggests ASX clarifies the timeframe for ASX's review so this step can be factored into relevant timetables.