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By email to regulatorypolicy@asx.com.au

ASA SUBMISSION - UPDATING ASX'S ADMISSION REQUIREMENTS FOR LISTED ENTITIES

Dear Ms Lewis

The Australian Shareholders' Association (ASA) represents its members to promote and safeguard their interests in the Australian equity capital markets. The ASA is an independent not-for-profit organisation funded by and operating in the interests of its members, primarily individual and retail investors, self-managed superannuation fund (SMSF) trustees and investors generally seeking ASA's representation and support. ASA also represents those investors and shareholders who are not members, but follow the ASA through various means, as our relevance extends to the broader investor community.

We refer to ASX's consultation paper titled "Updating ASX's admission requirements for listed entities" dated 12 May 2016. We note that ASX's objectives are to "strengthen the ASX listing rules framework and maintain an appropriate balance between the interests of issuers and investors in promoting efficient capital raising, maintaining market integrity and providing a market that is internationally competitive". ASA endorses all of these principles; however, as an investor body we are in particular concerned to ensure that the interests of smaller investors are advanced and safeguarded.

In preparing our responses in this submission in relation to the free float and spread requirements, we have had regard to the requirements of the London Stock Exchange (LSE), New York Stock Exchange (NYSE), NASDAQ, Hong Kong Exchange (HKEx), Singapore Exchange (SGX), Toronto Stock Exchange (TSX) and New Zealand Stock Exchange (NZX).

Unless expressly referred to in this submission, we make no comments on the proposed changes to the Guidance Notes and assume that the key changes from those Guidance Notes are detailed in the consultation paper.

For convenience, we refer to companies and shares throughout this submission, but our comments also apply to other listed vehicles, trust units and stapled securities. We concede that there may be a case for narrower rules for (non-convertible) debt securities.

Summary of ASA's position

ASA is broadly supportive of the changes proposed by ASX as set out in the consultation paper, with the exception of the changes to the spread test. In particular, we are concerned that the move to reduce the spread requirements, and at the same time substantially increase the minimum parcel value to be held per shareholder to satisfy the spread requirements, will disadvantage retail investors by reducing the number of retail investors being invited or able to access IPOs.

ASX has not demonstrated compelling arguments to support reducing the spread to 100-200 shareholders. We do not agree that this proposed change will facilitate the primary purpose of the spread test, as argued by ASX, being to "demonstrate sufficient investor interest in an entity to warrant its listing"; in fact, it could disguise a narrowing of interest. In our view, retaining a spread test similar to the current ASX requirements does achieve this purpose, whilst also ensuring that there is a sufficiently liquid market in the shares. It is arguable that the proposed reduction could impede post-float liquidity and price discovery. In this regard, we note that, with the exception of LSE, a number in the range of 300-400 is at the lower end as compared with ASX's peer exchanges.

Whilst not contemplated in the consultation paper, we would be supportive of a move to a one-tiered test requiring that there must be at least 300 public shareholders holding at least 25% of the number of shares on issue, with each shareholder holding a parcel of at least $2,000.

Minimum allocation for retail investors

We understand the Listing Rules for the Main Board in Hong Kong provide for a minimum of 10% of an IPO to be reserved for retail investors, or a higher amount via a clawback mechanism if retail demand is high. The rules in Hong Kong clearly facilitate retail participation in IPOs, which we believe is an important feature of equity markets. A fundamental role of securities exchanges is to facilitate the efficient raising of capital and in doing so, to ensure integrity in that process and to promote liquidity in the secondary market. This function should be genuinely open to all willing investors (subject to prospectus laws etc). We would welcome an increased emphasis on this by ASX as part of its efforts to reform the Australian equity markets.

In line with the objective of facilitating greater retail participation in IPOs, the Singapore Stock Exchange (SGX) engaged in a public consultation in 2012 regarding the introduction of changes similar to the HK regime, and again in February this year via the release of a consultation paper titled "Minimum Allocation to Facilitate Greater Retail Participation in IPOs". We applaud the efforts of the SGX in this regard and would like to see ASX consider requiring that companies provide for a minimum allocation for retail (public) investors in IPOs.

Responses to specific consultation questions

1. **Do you support the introduction of a 20% minimum free float requirement? If not, why not and would you support a different minimum free float requirement?**

We acknowledge that to date, ASX has taken a flexible approach to the issue of "free float" and has addressed it through guidance. Our view is that incorporating a significant "free float" requirement in the Listing Rules for entities seeking to list on ASX is a positive step, as it would greatly assist in promoting liquidity in the secondary market. Formalising the requirement will remove doubt as to when and how ASX's guidance will apply. We also understand all of ASX's peer exchanges have a free float or public float requirement.

We note ASX's view that a 20% minimum free float requirement strikes "an appropriate balance between supporting liquidity in the secondary market and supporting innovation and emerging growth industries". ASX acknowledges in the paper that "[p]eer exchanges generally have a rules-based minimum free float requirement in the range of 12-25%, although those exchanges also tend to have more easily satisfied minimum spread requirements than ASX".

ASA's view is that 20% is preferable to the present 10% as set out in Guidance Note 1. However, we would prefer ASX to stipulate a 25% minimum free float instead. Each of LSE, HKEx and NZX have a minimum 25% free float requirement, with HKEx and NZX also requiring a minimum of 300 and 500 shareholders, respectively. The basis for arguing that the spread requirements for those exchanges are lower than those of ASX (especially under the new proposed spread test) is not clear. We concede, however, that LSE does not have a spread requirement.

In any case, it is important that the "free float" requirement is linked to the spread of shareholders, such that the requirement cannot be easily met by a small number of large (but "non-affiliated") shareholders. See also our comments below regarding larger or substantial shareholders being included in the definition of "free float". For example, we note that NZX requires that, on listing, an entity's securities must be "held by at least 500 members of the public holding at least 25% of the number of securities of that class issued, with each member of the public holding at least a minimum holding".

2. **Do you have any comments on the proposed definitions of "free float" and "non-affiliated security holder" for the purpose of the proposed minimum free float requirement? Do you see any issues with excluding shares that are subject to voluntary escrow from the definition of "free float"?**

It is important that the definition of "free float" captures only shares which are held by the public, and that the definition adopted by the ASX is consistent with the commonly accepted definitions of "in the public" or "public float", having regard to how those terms are defined and used overseas.

Many overseas exchanges exclude substantial shareholders from the definition of a public shareholder. For example, LSE has taken the view that one indicia of shares not being held in public hands is if "any person or persons in the same group or persons acting in concert who have

an interest in 5% or more of the shares of the relevant class". Singapore also includes a 5% limit above which the shares are not counted as being held by the public, whereas NYSE, Nasdaq, TSX, HKEx and NZX have a 10% limit. In some cases, officers are also excluded from the definition of a public shareholder.

Under the proposed ASX definition of "non-affiliated security holders", it would appear that neither officers of the company nor substantial shareholders are excluded, and hence could be included for the purposes of the 20% free float. Given that the objective of the definitions of "free float" and "non-affiliated security holders" is to capture shares which are in public hands and to exclude shares which are not publicly held, we believe officers and substantial shareholders should not be included for the purpose of calculating whether the "free float" requirement is met.

We have no issues with excluding shares that are subject to voluntary escrow from the definition of "free float", as those persons to which a voluntary escrow are subject are likely to be affiliated with the company in some way. We also note that the proposed Guidance Note 1 states that "securities held by or for an employee incentive plan are not regarded by ASX as forming part of an entity's free float" – we agree with this position.

3. Do you support the proposed changes to the spread test? If not, what element or elements of the changes do you not support, and what are your reasons?

We do not support the proposed changes to the spread test. In our view, the existing spread test should either be retained, or replaced with a one-tiered test. As mentioned earlier, we would be supportive of a one-tiered test requiring that there must be at least 300 public shareholders holding at least 25% of the number of shares on issue, with each member holding a parcel of at least $2,000. We note our support for a one-tiered is premised strongly on the need to maintain the spread test at *at least* what is presently required.

In our view, ASX has not demonstrated compelling arguments to reduce the spread to 100-200 shareholders. ASA believes that this proposal would be detrimental to market integrity and liquidity. 200 would already be too low, and it seems perverse to stipulate a lower number of 100 for a higher free float value. ASX's spread requirements were reduced in 2012 and, with the exception of LSE which does not have a spread requirement, a number in the range of 300-400 is already at the lower end compared with ASX's peer exchanges. The only other exchange we are aware of which has a spread requirement in the range of 100-200 shareholders is the Hong Kong Growth Enterprise Market (GEM), which we do not see as a comparable exchange to the ASX.

We acknowledge ASX's argument that the spread requirements have not always been successful in ensuring that there is a sufficiently liquid secondary market for securities, and that there have been instances of companies attempting to satisfy the spread test by creating "artificial spread" which could have negative consequences for all investors in the company. However, we do not believe either of these reasons is sufficient to justify reducing the number of shareholders for the spread test. Liquidity is, and remains, an important part of the proper and efficient operation of the market; ASA strongly believes that if a company and its broker cannot find at least 300 new, public shareholders on listing, then it should consider other means to raise capital or postpone its

listing until it is able to demonstrate sufficient interest from investors. In any case, we believe that if ASX was to mandate that companies reserve a portion of securities in IPOs for retail investors as is the case in Hong Kong, or proposed in Singapore, this would alleviate any concerns about finding 300 public shareholders on listing and be beneficial in ensuring equal access to IPOs and a more liquid and genuine secondary market.

We note ASX has included a note in Condition 8 of Listing Rule 1.1 stating that the spread condition "is not met if spread is obtained by artificial means". We believe this, and the guidance in Guidance Note 1 regarding artificial spread, will assist with ASX's concerns about the prevalence of artificial spread.

Whilst we recognise that the proposal to increase the minimum parcel size for spread is linked to the reduction of the minimum number of shareholders, we do not support the increase to the minimum holding to be counted for the spread to $5,000. A minimum holding of $5,000 is significantly higher than the minimum parcel sizes required overseas. Whilst the $5,000 does not mean that all shareholders on listing must hold a parcel of at least that amount, we are concerned that the change may result in companies requiring a minimum application of $5,000 in their prospectuses to provide certainty that all applicants can be counted towards the spread requirements (provided there is no scaleback) and to limit the number of smaller shareholders of their registers.

4. Do you support the increase in the last year's profit element of the profit test? If not, please provide your reasons.

The ASA is supportive of this proposal. However, we are of the view that $500,000 is still very low compared to the profit requirements of ASX's peer exchanges and believe there is scope for increasing the threshold further.

5. Do you support the increase in the net tangible assets and market capitalisation elements of the assets test? If not, please provide your reasons.

The ASA is supportive of this proposal. However, we note that there are numerous exchanges overseas which incorporate a blended assets/market capitalisation test. We are concerned that allowing entities to list based on market capitalisation only could potentially allow the listing of dubious companies based largely on hype. This would not be in the interests of investors and we trust that ASX will be vigilant in the use of its absolute discretion to deny listing if it is of the view that a float is not suitable for listing on the ASX.

6. Do you think it is appropriate to extend the minimum requirement for $1.5 million working capital after deducting the first year's budgeted administration costs and costs of acquiring any assets (to the extent that those costs will be met out of working capital) to all entities admitted under the assets test? If not, please provide your reasons.

The ASA is supportive of this proposal. We expect ASX intends for the company's auditor to review the working capital calculation, even where no formal audit opinion is given.

7. **Do you think it is appropriate to maintain a fixed minimum $1.5 million working capital requirement in addition to a requirement for the entity admitted under the assets test to make a statement that it has sufficient working capital to meet its stated objectives? If you think the fixed working capital requirement should be a different amount, please tell us the amount and explain why.**

The ASA is supportive of this proposal. Also see our comments above in Item 6.

8. **Do you support the proposed requirement for entities admitted under the assets test to provide 3 full financial years of audited accounts, unless ASX approves otherwise? If not, please provide your reasons and describe what, if any, alternative approach you consider should be taken by ASX in order to meet the objectives of the proposed change.**

The ASA is supportive of this proposal and believes that this is in line with requirements for ASX's peer exchanges.

9. **ASX has proposed that it will generally accept less than 3 years of audited accounts for an assets test entity (or an entity or business to be acquired by the entity) only in the circumstances where ASIC will accept less than 3 full years of accounts in a disclosure document, as explained in Part F of ASIC Regulatory Guide 228 (RG 228).**

   Simultaneously with the release of this consultation paper, ASIC has released a consultation paper seeking comments on proposed changes to RG 228 setting out these circumstances.

   Are there additional circumstances where you consider ASX should be prepared to accept less than 3 years of audited accounts to those outlined in ASIC's consultation paper on RG 228?

The ASA considers that the approaches by ASIC and ASX should be broadly consistent in this regard. We will respond separately to the ASIC consultation paper.

10. **ASX has also proposed that it will only accept the types of modified opinion, emphasis of matter or other matter paragraph in accounts lodged with a listing application that ASIC will accept in a disclosure document, as explained in Part F of RG 228. Are there additional types of modified opinion, emphasis of matter or other matter paragraph that you consider ASX should be prepared to accept to those outlined in ASIC's consultation paper on RG 228?**

The ASA considers that the approaches by ASIC and ASX should be broadly consistent in this regard. We will respond separately to the ASIC consultation paper.

11. **Do you agree with the list of overseas home exchanges proposed in section 2.1 of Guidance Note 4 (i.e. the main boards of Deutsche Börse, EuroNext (Amsterdam), EuroNext (Brussels), EuroNext (Paris), HKSE, JSE, LSE, SGX, TSE (Tokyo), TSX (Toronto), NASDAQ, NYSE and NZX) as being ones generally acceptable for an ASX Foreign Exempt listing? Are there**

any of these exchanges you would delete from this list? Are there any other exchanges you would add to this list?

We are no issues with the list of exchanges proposed by the ASX.

12. Do you agree with the introduction of a further window for admission for ASX Foreign Exempt listings allowing them to be admitted to ASX if their market capitalisation is at least $2,000 million? If not, what threshold (if any) do you think would be appropriate?

We are supportive of this proposal. However, we believe that foreign entities applying for admission should also be subject to the spread and free float requirement. As a separate matter, we believe it is unsatisfactory for companies to seek listing in Australia when they are not required to produce a Remuneration Report, and even if they do, they are not required to seek an advisory vote on the report at their AGM.

13. Are there any specific issues or concerns that you can identify that would result from ASX removing the current requirements for foreign entities listed on ASX to maintain certificated registers in Australia?

None that we are aware of.

14. Do you believe the transition date of 1 September 2016 that ASX proposes for the introduction of the new admission rules is appropriate? If you think it should be sooner or later, please explain why?

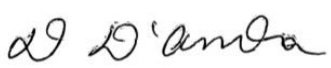
We have no in-principle objections to the proposed transition date of 1 September 2016. However, in light of the concerns that we have expressed in our submission, and observations that other respondents will have, we believe that it is most important that ASX gives due and proper consideration to the responses before proceeding with the changes as proposed.

15. Do you have any other comments on the issues discussed in this paper or the proposed listing rule and Guidance Note changes?

ASA welcomes the additional guidance provided by ASX in relation to its discretion to refuse admission to the official list and in relation to back door listings, as we believe the market will benefit from greater guidance in this regard.

Please do not hesitate to contact me if you have any queries.

Yours faithfully,



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