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24 June 2016

Diane Lewis
Senior Manager, Regulatory & Public Policy
Office of General Counsel
ASX Limited
20 Bridge Street
Sydney NSW 2000

Dear Ms Lewis,

ASX Consultation Paper dated 12 May 2016 – Hunt and Humphry Comments

Hunt & Humphry is pleased to be able to take the opportunity to make a submission to the ASX in relation to its consultation paper dated 12 May 2016 (**Consultation Paper**) on proposed amendments to the admission requirements for listed entities as well as other recent changes which have become apparent in ASX's policy and approach in relation to both IPO and backdoor listings.

Hunt & Humphry is a is a specialist projects law firm widely recognised for its niche focus on mineral resources, industry, infrastructure (ports, rail, roads, airports), energy and land development. Hunt & Humphry acts for companies engaged in both IPO's and backdoor listings and has first-hand experience of compliance with ASX listing rules and has worked with the ASX closely on numerous transactions throughout the past 12 years.

We address each of the questions posed by the Consultation Paper below and also make general submissions on other matters raised in the Consultation Paper as well as recent changes in regulatory practice. One such recent change is the implementation of a monthly policy and listing standards committee (**PLSC**) with an oversight function to the usual weekly listing committee which was not flagged in the Consultation Paper.

By way of general comment, our view is that while the majority of the proposals are acceptable there are certain changes which we regard as having a potentially discriminatory effect on the small to mid-cap market.

Principally our concerns are:

1. that the change in minimum holding to qualify for the spread test from $2,000 to $5,000 unduly discriminates against small and less sophisticated investors.
2. that the increase in the NTA requirement from $3,000,000 to $5,000,000 will lead to many

early stage exploration and development entities raising more money than is required for their near term objectives.
3. the suspension of listed entities from the date of announcement of a transaction that attracts Listing Rule 11.1.3 is contrary to the maintenance of an efficient market; and
4. the operation of the PLSC and the disclosure of the matters that the PLSC considers when making a decision is currently uncertain.

We have been made aware of other submissions provided to the ASX from fellow Western Australian legal and corporate advisors and confirm that Hunt & Humphry generally supports and is in agreement with those submissions.

General Submissions

Hunt & Humphry strongly disagrees with the current policy being implemented by ASX which requires the suspension of listed entities on and from the date of an announcement of a transaction which attracts Listing Rule 11.1.3. We submit that the previous policy approach allowed for a fully informed market to continue to trade and provided those shareholders who wished to exit a listed entity proposing a significant transaction an avenue to do so.

By removing this ability, the ASX has effectively locked all shareholders into a transaction which they are yet to approve. The removal of the ability to trade out of an entity for what is often a long period of time, in our experience up to 3 months or more, is prejudicial to existing shareholders. In addition, a suspension from trading does not allow the market to signal to an entity whether it tacitly approves or disapproves of a proposed transaction which is an extremely important element of such transactions. We submit that there are other options which already exist in ASX's regulatory toolbox to deal with any perceived mischief outlined in the Consultation Paper.

Hunt & Humphry has recently become aware of the establishment of the PLSC. We recently had a client's listing approved by the PLSC however the process, much of which was a mystery to us and indeed the ASX advisers acting on the listing, had the result of adding 5 weeks onto the listing approval process causing delay in our client's project. We understand this new committee has commenced review of new IPO and backdoor listing applications. We are strongly of the view that the monthly cycle of the PLSC and the uncertainty around its role is detrimental to the efficient operation of the ASX and is negatively impacting transactions both current and being contemplated in the market.

Submissions in Response to ASX Questions in the Consultation Paper

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?*

   Yes, we have no issue with this proposal.

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"?*

   We have no issue with this proposal.

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?*

While we do not expressly disagree with altering the number of shareholders we note that a reduction of this number has the practical effect of devaluing the shell company which in turn, in our view, harms the ability of a failed small cap company to recapitalise and begin life as a new listed entity given that the value proposition has changed.

We do not support the increase in the minimum holding threshold necessary to qualify for the spread test as we are firmly of the view that this will lead a reduction in participation by less sophisticated investors retail investors from participating in ASX listed companies.

We regularly see applications for shares in amounts less than $5,000 and are genuinely surprised that the ASX would take this step in seeking to exclude those that cannot afford a $5,000 investment. Further we note that in percentage terms, this increase is extraordinarily large.

We strongly urge the ASX to reconsider the required quantum under this proposed change and see no reason for it to be anything other than the current $2,000. If the ASX is minded to make a change, we would urge the ASX to consider a staged increase over a longer period of time as is the norm for most regulatory changes.

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

We have no issue with this proposal.

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.*

No, we do not support this increase as detailed below.

The majority of our clients, being WA headquartered ASX listed companies, are involved in the resources industry and this change will have a disproportionate effect on these companies. The ASX has always been seen as a viable method of obtaining finance for exploration and development companies and has built a reputation as a market of access for small-mid cap explorers and developers.

Early stage exploration and development companies will often not require the level of cash that ASX is proposing under this change and we are concerned that forcing such companies to meet the $5m NTA threshold may lead to the failure of fundraising transactions, entities inflating budgets to justify the increased raising requirement and potentially misleading statements being included in disclosure documents in relation to use of funds.

Further, it is our experience that forcing companies to raise more than they require may mean that these companies and their initial investors, including initial retail investors, miss out on the upside of any success in early exploration and development activities and the following opportunity to raise further funds at higher valuations.

In our experience, we do not believe that the increase proposed will improve the quality or integrity of the market.

Further, we note that in percentage terms, this increase is extraordinarily large. If the ASX is minded to make a change, we would strongly urge the ASX to consider a carve out for listed companies in the resources industry. We would also suggest that if any change is to be made for listed companies outside the resources industry, it be implemented as a staged increase over a longer period of time as is the norm for most regulatory changes.

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.*

We have no issue with this proposal.

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.*

This appears appropriate.

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.*

In our view, it would be preferable for ASX to publish clear guidance on the circumstances in which it may exercise its discretions.

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?*

No comment.

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?*

No comment.

11. *Do you agree with the list of overseas home exchanges proposed in section 2.1 of Guidance Note 4 (ie 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?*

    No comment.

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?*

    No comment.

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?*

    No comment.

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?*

    While we understand that ASX has already been implementing a number of the proposed changes and may have been doing so for a period of time prior to the release of the Consultation Paper on 12 May 2016.

    We are strongly of the view that prior to implementing any significant regulatory changes such as those outlined in the Consultation Paper and other changes mentioned in this submission, ASX should engage in full industry consultation, which would include not implementing changes at the same time as publishing a consultation paper and allowing a significantly longer period prior to implementation.

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

    Hunt & Humphry is in favour of ensuring that the ASX remains a market of quality and integrity, however we are of the opinion that the proposed changes to the Listing Rules and Guidance Notes go beyond what is required to achieve this.

    We urge the ASX to:

    (a) reconsider the $5,000 minimum holding in relation to the spread test;

    (b) reconsider the increase in the NTA test;

    (c) repeal the policy of suspending a listed entity from the date of announcement where Listing Rule 11.1.3 applies; and

(d) provide clear guidance on the operation of the PLSC and provide specific examples of when ASX may use its discretion to refuse to admit a company to the Official List.

For any questions please contact Josh Hunt or Paul Harley.

Yours sincerely,

Josh Hunt & Paul Harley
HUNT & HUMPHRY

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