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24 June 2016

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

Email copy: regulatorypolicy@asx.com.au

Dear Ms Lewis,

Submission regarding proposed changes to admission requirements for listed entities

OnMarket BookBuilds (OnMarket) makes this submission in response to the Australian Securities Exchange (ASX) consultation paper, 'Updating ASX's admission requirements for listed entities' (Consultation Paper).

We launched the OnMarket platform in October 2015, to provide the public with an easily accessible service where investors are notified of research, apply for shares in IPOs and are allocated shares on a fair basis. The service, which is free to investors, is available to any legally eligible bidder, irrespective of their broker. On allocation, the shares are lodged with their existing broking account and may be traded in the secondary market. We do not provide secondary trading services, and do not compete with ASX market participants in trading.

The ASX has sought consultation from the public about the proposed changes. We were not consulted by ASX prior to ASX publicly releasing its proposed amendments. We had been informally informed by a third party that ASX was intending to propose changes to the listing rules, but not what the changes related to. We reached out to ASX on several occasions prior to the publication of the proposed changes asking to discuss. Either we received no response or we were told to submit our views into the public consultation process. If we had had the opportunity, we would have shared our views with ASX privately prior to the proposed rules being publicly released.

Due to the specialised and technical nature of the listing rules it was, in our opinion, unlikely that members of the general public would be aware of the proposals, and highly unlikely that they would fully understand the effect that these changes would have on their ability to access IPOs. Accordingly, and consistent with our underlying philosophy that the general public should be informed about potential IPOs and have the opportunity to participate in them, we decided that it was important to ensure the public was aware of these changes. We have encouraged this by informing the public about the proposed listing rules, and asking them to submit their views directly to ASX.

We have also asked interested people to sign a petition as their submission to ASX. We have only had the petition open one week, and in that time, 1856 reserved people have added their name. We believe that this is a significant number, and note that in the last ASX consultation, only 17 parties made submissions.

EXECUTIVE SUMMARY

In summary, we make the following recommendations to ASX in response to the Consultation Paper:

Key Recommendations

1. Introduce rules, modelled on Hong Kong Stock Exchange (HKEX) and Singapore Exchange (SGX), to increase the pool of capital for IPOs and access for all Australian investors by:
   - (a) reserving at least 25% of every IPO for the Australian public which includes:
     - (i) 5,940,000 Australians who directly hold shares, being 33% of the adult population[1]; and
     - (ii) Australia's 578,000 SMSFs, with 1.1 million members, accounting for $592 billion in assets, being 29.1% of Australia's retirement savings pool[2].

     If the public does not bid, then the portion of the reserved 25% that has not been applied for, may be allocated to clients associated with the syndicate banks and brokers.
   - (b) ensuring that any legally eligible person, or entity, may bid by providing adequate distribution facilities that inform public investors of the offering and allow them to bid; and
   - (c) ensuring that the allocations within this pool are fair and that investors that receive an allocation from syndicate banks cannot double-dip into the portion reserved for the public
2. Do not reduce the number of shareholders required for admission to the official list.

Other Recommendations

3. Do not lift the minimum parcel recognised for the shareholder spread test from $2,000 to $5,000.
4. Do not increase the minimum market capitalisation requirement from $10 million to $20 million.
5. Confirm that ASX's reference to Know Your Client (KYC), is intended to be a reference to client identification and not prevent self-directed investors that use execution only facilities.

We believe these recommendations are the best way to:

A. ensure 29.1% of the Australian retirement pool, and the 33% of the adult population that owns shares, have a reasonable opportunity to participate in the wealth generation process of IPOs and to encourage share ownership;

B. significantly increase the pool of capital that companies can effectively access when they are using the ASX listing process to raise equity;

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[1] Australian Securities Exchange 2014, *The Australian Share Ownership Study 2014*, viewed 23 June 2016 at <http://www.asx.com.au/documents/resources/australian-share-ownership-study-2014.pdf>

[2] Association of Superannuation Funds of Australia 2016, *Australian Prudential Regulatory Association Superannuation Statistics May 2016,* viewed 23 June 2016 at <https://www.superannuation.asn.au/resources/superannuation-statistics>

C. respond to the structural changes caused by the divestment, in recent years, of retail brokers by most investment banks that operate in the Australian market;

D. ensure that all Australians, especially young investors, are not excluded from IPOs by virtue of the introduction of a higher minimum parcel size;

E. ensure that smaller, growth companies have a leading exchange through which they can access public capital, while providing investors with the protections afforded by listing rules, and the benefits of secondary trading and liquidity afforded by being listed on the main stock exchange;

F. encourage secondary market liquidity by facilitating a larger and more diverse investor base; and

G. validate the pricing of the capital raising.

We believe that our proposals align with ASX's objectives and obligations of ensuring that it operates a market which is fair, orderly and transparent, and continues to be internationally competitive.

PART 1: KEY RECOMMENDATIONS:

Recommendations (1) and (2) to promote fair access and substantially increase the total pool of capital available for companies when they raise capital

This section sets out:

1. how other major exchanges in the region provide a rules framework to guarantee access for all retail investors;
2. retail ownership of shares in Australia, and how this adds weight to the argument for guaranteeing retail access;
3. structural changes in the Australian Investment Banking Industry which mean that increased access to IPOs for retail investors will not occur in the absence of ASX implementing rules;
4. Regulatory Guidance as to the Intent of the Australian prospectus regime and other considerations; and
5. Medibank as a pertinent example of the relative demand from public investors where the public has confidence in the allocation process.

Introduction

Both the HKEX and the SGX, Australia's nearest large exchanges, have listing rules governing IPO capital raisings to ensure there is a substantial portion of the offering available for retail investors. In our view, the market structure in Australia, particularly in relation to:

1. the high levels of direct share ownership - 5.94 million Australians, representing 33% of the adult population;
2. self-managed super funds - accounting for 29.1% of the total Australian retirement savings pool; and
3. the sale/disposal/separation of retail brokers from investment banks in recent years,

all provide compelling reasons why the guaranteed percentage allocation of IPOs for retail investors should be as high, if not higher, than the Hong Kong and Singapore markets.

The Financial Conduct Authority (UK) and the UK Government are also focussing on measures to improve IPO pricing and allocation practices. Notably, the Lord Myners Review (explained in more detail below) recommended the benefits of the ASX BookBuild facility to the UK Government in its report in relation to IPO practices, in particular future UK Government privatisations.

Hong Kong

HKEX listing rules allow the lead manager and all syndicated distributors to place a maximum of 75% of the issue with their clients[3]. The lead manager is then required to make adequate distribution facilities available for the residual **25% to be bid for, and allocated to, the 'general public'**.

"General public" means investors other than clients of the lead broker, but would not preclude its clients provided they had not received any special notification or invitation in respect of the placing. The Exchange [HKEX] would not find it acceptable for a client of the lead broker to receive an allocation from that portion of the placing reserved for

[3] Stock Exchange of Hong Kong Limited n.d., *Appendix 6: Placing Guidelines for Equity Securities,* viewed 23 June 2016 at <http://en-rules.hkex.com.hk/net_file_store/new_rulebooks/c/o/consol_mb.pdf>

clients of the lead broker and a further allocation either as a member of the general public or as a client of any other Exchange [HKEX] Participant with whom or through whom any of the securities in question are placed.

When there is insufficient demand from the general public, the lead manager is then given the opportunity to place the shortfall with their clients. For particularly large issues, the HKEX has the power to reduce the public float requirement (to be distinguished from "free float") to a minimum of 15%[4].

For issues where both the HKEX and lead manager preempt insufficient appetite from the general public, the issue may be accomplished 'by way of placement'. In this case, the minimum public requirement is decreased to 10%, but a clawback mechanism is put in place to ensure that demand by the public is met if it exists. If there is unforeseen demand, the clawback mechanism increases the minimum public requirement to either 30% or 50% of the issue, depending on the level of oversubscription by the general public[5]. Therefore, issuing 'by way of placement' increases the efficiency of the allocation process when there is little demand from the general public, but ensures that the public receive sufficient allocation if the lead manager and HKEX had underestimated public demand.

This provision for increasing the public float requirement up to 50% acts as an effective anti-avoidance provision.

Singapore

Under current Rule 210(1) of the SGX rulebook, allocation to retail investors is ensured via the following distribution requirements:

1. for offers of less than SGD$75 million, at least 40% of the issue or SGD$15 million, whichever is lower, **must be** allocated to investors who hold less than 0.8% of the offer, or SGD$300,000, whichever is lower;
2. for offers of between SGD$75 million and SGD$120 million, at least 20% of the issue **must be** allocated to investors who hold less than 0.4% of the offer; and
3. for offers of greater than SGD$120m, there are no allocation requirements (however see recent developments referred to below)[6].

Rule 233(1) of the SGX rulebook requires that "where an invitation involves a public tranche for subscription or purchase… the basis of allocation and allotment to investors **must be** fair and equitable."

In addition, SGX requires a shareholder spread of at least 500, which must not be obtained by artificial means.

To further facilitate and encourage greater retail participation in Singapore's capital market, the SGX issued a Consultation Paper in February 2016 titled "Minimum Allocation to Facilitate Greater Retail Participation in IPOs"[7]. As part of the consultation, SGX is proposing that **in addition to** Rule 210(1) detailed above, companies listing on the

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[4] Stock Exchange of Hong Kong Limited n.d., *Chapter 8: Equity Securities Qualifications for Listing,* viewed 23 June 2016 at <https://www.hkex.com.hk/eng/rulesreg/listrules/mbrules/documents/chapter_8.pdf>

[5] Stock Exchange of Hong Kong Limited 1998, *Practice Note 18,* viewed 23 June 2016 at <https://www.hkex.com.hk/eng/rulesreg/listrules/mbrules/documents/pn_18.pdf>

[6] Singapore Exchange Limited n.d., *Mainboard Rules*, viewed 23 June 2016 at <http://rulebook.sgx.com/en/display/display_viewall.html?rbid=3271&element_id=4830&print=1>

[7] Singapore Stock Exchange Limited, *Consultation Paper on Minimum Allocation to Facilitate Greater Retail Participation in IPOs*, viewed 23 June 2016 at < http://www.sgx.com/wps/wcm/connect/sgx_en/home/regulation_v2/consultations_and_publications/PC/Consultation+Paper+on+Minimum+Allocation+to+Facilitate+Greater+Retail+Participation+in+IPOs>

main board **must** allocate a minimum of 10% of shares in all IPOs to retail investors, up to a maximum of SGD$100m.

This is the second consultation on the introduction of a mandated minimum IPO allocation to retail investors, following the first consultation in 2012 which proposed a minimum 5% retail allocation (in addition to Rule210(1)). The increase in the proposed minimum retail allocation from 5% to 10% followed positive feedback received from the earlier consultation.

In proposing this change to the listing rules in February 2016 the SGX CEO, Loh Boon Chye stated:

> *"SGX's proposal for a minimum 10% retail allocation [in addition to the existing requirements set out in Rule 210(1)] for shares of Mainboard IPOs is aimed at giving individuals more investing opportunities in the Singapore equities market. While market conditions may have been uncertain of late, this initiative is for the long term and is part of overall enhancements to the Singapore stock market".*

Recent Developments in the United Kingdom: FCA Occasional Paper and Lord Myners Review

The Financial Conduct Authority (UK) ("FCA") has recently, on 15 April 2016, released "Occasional Paper No. 15: Quid pro quo? What factors influence IPO allocations to investors?". The Paper draws detailed information from a large sample of investment banks to test the determinants of IPO allocations. The research draws on data gathered by the FCA, and covers 220 IPOs managed from the UK raising around $160bn. Detailed information on book-building has been analysed with data on revenues generated (from trading and other activities) by investment banks' buy-side clients, and data on post-IPO trading. The study finds strong evidence that most, but not all, of the major investment banks allocate in favour of the buy-side clients that produce the most revenue.

We strongly support the work of the FCA in undertaking a study of the empirical evidence to better understand how IPO allocations occur in practice. We highly recommend the report, its terms of reference, the actions of the FCA to ensure that data was available for the study, and its comprehensive findings to ASX and the Australian Securities and Investments Commission.

The FCA has taken a proactive approach and sought our views, amongst many others, on measures to improve IPO allocation practices. We have spoken with members of the FCA in the last week. We would like to publicly acknowledge and thank the FCA (UK) for the opportunity to contribute to efforts in the United Kingdom to improve the fairness, transparency and efficiency of their IPO processes.

As you know, we developed and patented the intellectual property that underpins the ASX BookBuild facility. In Australia, we licensed the intellectual property to ASX, and the ASX BookBuild facility was launched in October 2013.

In 2014, following public concerns about the pricing and allocation processes used for the Royal Mail IPO, the UK Government appointed Lord Myners to lead a review into IPO practices. The Myners Review was undertaken by a panel of the Lord Myners, CBE (Chair), David Challen, CBE, Professor Francesca Cornelli, Jitesh Gadhia and Huw Jones.

The Panel identified important stakeholders in the UK's capital markets and wrote to 97 individuals and institutions inviting written submissions to inform the review process. Amongst many others, OnMarket BookBuilds also made submissions to the Panel.

"*An Independent Review for the Secretary of State for Business, Innovation & Skills: IPOs and Bookbuilding in Future HM Government Primary Share Disposals*" (the "Myners Review Report") was published on 16th December 2014.

The Myners Review Report stated:

> *"In Australia an innovative hybrid between auctions and bookbuilding has been developed. This system aims to allow fair, orderly and transparent pricing and allocation of new securities 'on-market' by using the existing stock exchange infrastructure…. We welcome the principles behind this approach and strongly encourage this and any other digital auction method that helps to remove gaming from the process and brings wider transparency to enhance price discovery."*

In its recommendations to the UK Government, the Myners Review stated:

> *"We believe that it is inevitable that bookbuilding will transition over time to a more digital online auction with more transparent rules. We believe this has significant advantages over a bookbuild based on non-binding expressions of interest and involving an opaque and discretionary approach to allocation. Auctions address many of the conflicts of interest associated with bookbuilding and are likely to be considerably cheaper in terms of fees."*

The London Business School invited Ben Bucknell, as CEO of OnMarket BookBuilds, to provide the keynote speech at the symposium which was arranged to discuss the recommendations of Myners Review Report. We would like to publicly acknowledge and thank the members of the Myners Review Panel for the opportunity to contribute to efforts in the United Kingdom to improve the fairness, transparency and efficiency of their IPO processes.

We are surprised and disappointed that ASX has proposed moving in the opposite direction to its international peers, particularly in light of the current consultation being undertaken by SGX. Had ASX consulted with OnMarket BookBuilds prior to the release of its proposals publicly, we could have advised ASX of these international trends and the active encouragement of retail investors in IPOs by ASX's nearest large exchanges and developments in the UK.

Australian Retail Ownership

According to the ASX Share Ownership Study 2014, 6.48 million Australians (36% of the adult population) own investments listed on the sharemarket. While 0.54m (3%) own these investments indirectly, 5.94m (33%) are direct holders.

We note that there have been 1,015 IPOs in the last 10 years on the ASX[8]. Throughout that 10 year period there were only three government privatisations; Telstra (tranche 3), QR National, and most recently Medibank. All three had a well publicised government policy of promoting investment by retail investors. Given that retail investors were assured of both reasonable access to the IPO and of a fair allocation process, retail investors came out in force for all three IPOs. Total investor participation numbers for these IPOs were:

(a) Telstra (T3), November 2006, 378,000 investors;

(b) QR National, November 2010, 79,000 investors; and

(c) Medibank, November 2014, 379,000 investors.

However, in some cases, the relative scale-back between the public float and the institutional bookbuild was not disclosed. We believe that greater transparency of the

[8] Source: Dealogic

relative scale-backs between retail and institutional investors is in the public interest as well as improving the functioning of capital raising processes.

The ASX Share Ownership Study 2014 also confirmed the trend among Australian investors towards direct investing, that is, investors expressing their desire for more control over their portfolios. Taking into account population growth, this shift in investment style means that more Australians are holding direct shares only, rather than both directly and indirectly. From this, it is reasonable to conclude that Australian investors have a desire to invest directly in ASX listed companies, including IPOs.

ASIC report: Assessment of ASX Limited's listing standards for equities

The Australian Securities and Investments Commission (ASIC) noted in its June 2016 report "Assessment of ASX Limited's listing standards for equities" that:

> *ASX is responsible for the listing standards of 99.9% (by market capitalization) and 96.2% (by number) of entities that are listed in Australia. Its listing standards are, therefore, essential to providing:*
> - *Investors with an opportunity to grow their wealth; and*
> - *Issuers with access to those investors to fund innovation and expand their businesses*

Respectfully, in light of the abovementioned ASIC report, the question beckons as to how the proposed ASX listing standards in relation to the reduction in the spread requirement, provides *"investors with an opportunity to grow their wealth"*?

We understand that the ASX's proposed reduction in the spread test to 100 shareholders for large IPOs is, in part, driven by its concerns that some large IPOs are multiple times oversubscribed by institutions, but have struggled to meet the existing 300-400 shareholder spread test. It would be fair to say that if these IPOs were open to retail participation, by having a general public offer, then the spread requirement would have been easily met. Under the current process, in most cases, only investors that have been "invited" by syndicate banks and brokers are able to express their interest in an IPO.

By proposing a reduction to 100 shareholders, the ASX has recognized that the current listing rules do not meet the goals set out by ASIC above. It is clear that, where the prevailing IPO practices neither give 99.7% of issuers access to all available bidders and capital, nor give 99.9% of Australian investors the opportunity to grow their wealth[9], that the admission criteria in the listing rules is not meeting ASIC's stated goals, nor the best interests of the most important stakeholders in the sharemarket: investors and companies.

We applaud ASX for recognizing that the existing listing rules are facilitating market practices that can lead to less than 400 investors in highly sought after IPOs. However, we respectfully submit that the proposed reduction in the spread test is not the answer as it will entrench and exacerbate, rather than address, the underlying problems identified in this paper.

Current spread test threshold was set in 1994

The ASX consultation paper notes that proposed changes to the spread test aim *"…to better demonstrate a sufficient level of investor interest in the entity and its securities to justify listing."* In our view, reducing the minimum number of security holders required, does not reflect this objective. In fact, the reverse is true. A lower number of security holders required to satisfy the spread test will result in information from the bookbuild

[9] See reference above to only Government privatisations providing for guaranteed retail access.

or other capital raising process that is less indicative of the level of interest in an entity and its securities.

We note that since the introduction of the spread test in 1994, that electronic communications have changed the market landscape. In 1994, email was virtually non-existent, now it is ubiquitous. ASIC has published the regulatory guideline *RG 107 Fundraising: Facilitating electronic offers of securities*. This regulatory guideline encourages the use of electronic disclosure documents and electronic application forms, including the use of email and the internet for IPOs. The significant advances in technology from 1994 have not only made investing easier and more convenient for investors, but they have also given the issuer of the securities the opportunity to use email, internet, and social media to create awareness of their IPO and ultimately facilitate investor participation in their IPO.

The following extracts from RG 107 are particularly instructive:

RG 107.2 We want to facilitate and encourage the continued and future use of electronic disclosure documents and electronic application forms for offers of securities under CH6D, including the use of multimedia or web based platforms, particularly as we anticipate that this is an area that will grow in popularity and that may experience significant advances in technology.

RG 107.3 We recognise that there are many advantages of using email and the internet to distribute disclosure documents and application forms, including the ease and convenience of use for investors. Additionally, web based disclosure documents with electronic content can be more interactive and promote understanding for investors.

RG 107.4 The use of electronic disclosure documents also has advantages for persons offering securities and persons involved in the distribution of disclosure documents by reducing costs (eg. printing and mailing) and increasing the speed and availability of information.

RG 107.28 We also aim to encourage and facilitate the use of non-print based communications (eg. video or audio presentations) to assist investors in understanding information and making informed investment decisions."

Additionally, the Australian population has grown significantly since 1994. We suggest that meeting a 400 shareholder spread requirement would now be easier for companies than it has ever been before.

OnMarket BookBuilds continues to be an advocate for the rights of all shareholders and we have consistently argued that retail investors should have the opportunity to have access to capital raisings, including IPOs, on an equal footing with wholesale and institutional investors. A core concept of ASX operating a financial market in a fair, orderly and transparent manner, as indicated by its licence obligations under section 792A of the *Corporations Act* 2001 (Cth), is that all market participants are placed in an equal position such that there is a level playing field for all investors[10]. ASX should be encouraging as many people as possible, especially younger investors, to participate in the equity market. In our opinion however, retail investors are unduly restricted from participating in a significant number of capital raising events as a result of the lack of listing rules to guarantee they receive adequate allocations as a class of investors.

We believe that ASX's proposal to significantly reduce the number of security holders for a company to be admitted to the official list will further restrict opportunities for retail shareholders to invest in IPOs. In the case of large offerings, other than Government

[10] Transmarket Trading Pty Limited v Sydney Futures Exchange Limited [2010] FCA 534, [95]

privatisations, we believe that it will cement the complete exclusion of retail investors from IPO capital raising process.

We also refer to our submissions to the 2014 Financial System Inquiry (FSI) which detail the exclusion of retail shareholders from the primary equity market via private placements.

Structural changes in the Australian Investment Banking Industry

We note that, in the last few years, the global investment banks operating in Australia have mostly divested, separated, or have publicly stated that they are considering the divestment of, their wealth management/retail broking operations.

Most investment banks that underwrite and manage the majority capital raised in IPOs do not, or no longer, have wealth management operations for retail investors (or have financial thresholds that are so high that most Australians cannot qualify to become a client). These include:

- UBS
- Goldman Sachs
- Credit Suisse
- Merrill Lynch
- Citi

Understandably, in the absence of rules that mandate a pre-determined level of public participation, these investment banks will allocate the overwhelming majority of IPO shares to institutional clients with whom they have brokerage relationships. To meet current spread requirements, one or more brokers with wealth management operations may be appointed as co-manager. This, or these, co-manager(s) will then offer shares to a sufficient number of selected clients in order to meet the minimum spread requirement.

In the last few years, it has become common for broker firm bids to be taken prior to the prospectus being formally lodged with ASIC, or at the very least, prior to the end of the ASIC exposure period. As the pathfinder, by definition, has not been lodged at this time, only wholesale and sophisticated investors (ie. persons with more than $2.5 million in assets or $250,000) are entitled to bid[11]. Typically, a 'pathfinder' prospectus is distributed to a select, limited number of bidders, usually with a confidentiality obligation to prevent disclosure to retail investors. In attractive, well-sort after IPOs, all of the IPO shares are allocated to institutions and investors that have sufficient wealth to meet or exceed the net assets or net income test prior to the IPO prospectus even being lodged with ASIC or made publically available.

This means that, more often than not, there are no IPO shares available for retail investors to bid on during the offer period.

We are, however, cognizant of the need for underwriters to distribute risk associated with underwritten offers. To alleviate this concern, we point to the market practice in the Singapore and Hong Kong markets where agreements include a clawback provision to accommodate the final level of retail demand.

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[11] *Corporations Act 2001* (Cth) s708

Regulatory Guidance as to the Intent of the Australian prospectus regime and other considerations

ASIC RG 228 Prospectuses: Effective disclosure for retail investors states:

> *"The purpose of a disclosure document is to help retail investors assess the risks and returns associated with an offer and make informed investment decisions."*

The intended, legislated role of prospectuses in capital raising is undermined, and becomes irrelevant, if market practices mean that retail investors are not given the opportunity to bid in IPOs that are raising capital by way of a prospectus. This is clearly an unintended outcome as disclosure documents must be prepared to a standard relevant for retail investors.

We believe that the current practice of pre-selling as much of the offer as possible via broker-firm bids, will mean that only the minimum specified percentage available via the public allocation will be made available to retail investors. Therefore, it is important that the percentage reserved for the public is high enough to provide retail investors with a reasonable allocation, after any scale-backs. Otherwise, retail investors will be disadvantaged relative to institutional investors, in the relative percentage scale back of their bids.

As lead managers and syndicate banks, naturally, have significant financial thresholds to qualify as a client, investors should not be excluded from participating simply because they are not clients of a particular lead manager. The public allocation must be reserved, as it is in Hong Kong, for clients that do not receive allocations from syndicate banks.

Australian Securities and Investments Commission noted in its June 2016 report 'Assessment of ASX Limited's listing standards for equities' that: *"Market operators have an essential role to play by: a) actively and robustly administering the qualification process for listing".* We note that ASX's listing rules already govern many aspects of the listing process, that some of the newly proposed changes (such as the requirement to provide client identification) do extend to the capital raising process, and that ASX already (for example via listing rule 7.1) governs other capital raising processes of listed companies. Therefore, we believe that the purpose and scope of the listing rules should extend to ensuring that all investors have a reasonable opportunity to participate in IPOs, and that companies raising capital have a reasonable opportunity to access all investors. We do not believe it is appropriate for ASX to take the view that such critical matters should be left to the discretion of market participants who have no market operator obligations to ensure a fair, transparent and orderly market, but are commercial, profit-driven entities.

To ensure that the public are made aware of IPOs and that any legally eligible person, or entity, may bid, we recommend the Hong Kong approach that the issuer *must provide adequate distribution facilities that inform public investors of the offering and allow them to bid.*

Medibank as a pertinent example of the relative demand from public investors where the public has confidence in the allocation process

We note that 60% of shares issued in the Medibank float, being 1.65 billion shares valued at $3.31 billion, were issued to retail shareholders from the Retail Offer tranche at a capped price of $2.00[12]. To qualify for allocation from this tranche, investors were required to be eligible retail investors in Australia or New Zealand, and could receive no more than $250,000 in shares, beyond which they could receive additional allocations from the Institutional Offer tranche at the Final Price[13].

With almost 400,000 retail investors applying, demand was so strong that applicants to the General Public Offer who bid for up to $14,000 in shares received an allocation of up to $7,150. **Any applications above $14,000 received only 5% of their bids above this amount**. The Institutional Offer, which was completed under a variable price Bookbuild run by the Joint Lead Managers, resulted in a Final Price of $2.15 per share[14].

The substantial oversubscription of the Retail Offer is clear evidence of the unsatisfied public demand for IPOs. It also provides an indication of the significant amount of capital that the public is willing to commit when they have access to IPOs and confidence in the allocation process. In the case of Medibank, the Government provided the necessary confidence. For IPOs of non-government owned entities, we strongly believe investors will need the ASX Listing Rules to mandate fair access and transparent allocation protocols in order to have confidence in the system. These measures would encourage similar broad based investor interest in companies that raise capital by way of IPO. We do not believe that if the rules only convey some general obligation of fairness on the lead managers that this would create a sufficient level of confidence, amongst public bidders.

The Medibank IPO is also instructive for determining the threshold dollar value for bids to be included in the public allocation.

The fact that any applications above $14,000 received only 5% of their bids above this amount, is an indication that the threshold for the public allocation should be significantly higher than this. We believe that the following factors are pertinent for determining the appropriate financial threshold for bids to qualify for inclusion in the public allocation:

1. the average SMSF now has $1.07m in assets[15], according to the Australian Tax Office's most recent report;
2. research that suggests the benefits of diversification decline significantly after a portfolio includes 10 stocks;
3. bidders into the public allocation, especially the average SMSF, should be able to bid for and receive an allocation (after scale-backs, if any) that makes reviewing and researching the prospectus worthwhile; and
4. allowing very large bids could, in offers with significant scale-back, result in smaller bidders receiving an allocation that is too small to be a relevant, and meaningful, part of their portfolio.

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[12] Medibank Private Limited 2014, *Pre-quotation disclosure,* viewed 23 June 2016 at <http://www.asx.com.au/asxpdf/20141124/pdf/42tywgnjk43vcj.pdf>

[13] Medibank Private Limited 2014, *Prospectus,* viewed 23 June 2016 <https://www.medibank.com.au/content/dam/medibank/About-Us/pdfs/privatisation/Medibank-Private-Prospectus.pdf>

[14] Medibank Private Limited 2014, *Pre-quotation disclosure,* viewed 23 June 2016 at <http://www.asx.com.au/asxpdf/20141124/pdf/42tywgnjk43vcj.pdf>

[15] Australian Tax Office 2016, *Self-managed super fund statistical report March 2016,* viewed 23 June 2016 at < https://www.ato.gov.au/Super/Self-managed-super-funds/In-detail/Statistics/Quarterly-reports/Self-managed-super-fund-statistical-report-March-2016/?anchor=SMSFannualdata#SMSFannualdata>

Consequently, we recommend that bids of $100,000 or less be eligible for inclusion in the public allocation.

However, we would be interested in the views of the Australian Shareholders Association and the SMSF Association on the question of an appropriate maximum bid size for inclusion in the shares reserved for public allocation.

PART 2: OTHER RECOMMENDATIONS

Recommendation 3: Do not lift the minimum parcel recognised for the shareholder spread test from $2,000 to $5,000.

We recognise that the ASX wishes to discourage the practice of 'artificial' spread creation, and that raising the parcel size from $2,000 to $5,000 would discourage this behaviour. However, should ASX lift the minimum parcel size, then this would become the standard drafting in all prospectuses. Medibank is a good example of that. Even though the ASX marketable parcel definition refers to $500[16], and the Government had a publicly announced policy intention of including as many shareholders as possible, the minimum application under the prospectus reflected the benchmark set by ASX, i.e. $2,000.

We advocate for small investors and believe that it is particularly important that young people have the opportunity to experience investing and understanding IPOs. We believe that raising the bar to $5,000 may exclude some investors, or result in other young investors to bid for a higher amount in an IPO than would be the case if the threshold were $2,000. This could lead to a higher than desirable concentration of risk in their portfolios.

This could particularly be the case for people that are testing their investment skills in IPOs for the first time. As disclosure documents are required to contain all information required for a retail investor to make an informed investment decision and, as all the relevant information is contained in one document, we believe IPOs can be an appropriate way for less experienced investors to understand investing. However, it would be an unfortunate unintended consequence if the ASX listing rules led to young, or less financially secure people, to have greater concentration to a stock as a result of the minimum application size being increased by 150%.

Recommendation 4: Do not increase the minimum market capitalisation requirement from $10 million to $20 million

In our view, increasing the minimum market capitalisation threshold required to meet the assets test from $10 million to $20 million would decrease investment opportunities available to investors and deny them the ability to assess for themselves the merits of entities that could not meet the proposed new market capitalisation threshold. Furthermore, we believe the proposed increase to the minimum market capitalisation requirement would erode ASX's competitiveness internationally.

[16] Australian Securities Exchange 2010, *ASX Operating Rules: Procedures,* viewed 23 June 2016 at <http://www.asx.com.au/documents/rules/asx_or_procedures.pdf>

We note that, in an examination of all IPOs over the period from 1 January 2005 to 31 December 2015 with market capitalisation of <$20m have, on average, materially outperformed IPOs of >$20m:

Date Post Listing	1 Day	1 Wk	2 Wk	1 Mnth	3 Mnths	6 Mnths	1 Yr
Share Price outperformance of <$20m mkt cap over >$20m	58%	79%	69%	103%	134%	95%	1%

Source: Dealogic

More analysis and more data is required to assess whether average outperformance continues over longer time periods. We recommend that ASX undertake further analysis before implementing rules that prevent smaller companies from listing.

However, we note that the proposed listing rule changes would not have prevented the collapse of large listed corporates, such as:

- Dick Smith, (implied market cap at listing $520m[17])
- RAMS, (implied market cap at listing $885m[18])
- Vocation, (implied market cap at listing $378m[19])
- McAleese, (implied market cap at listing $422m[20])

These collapses would appear, on face value, to have resulted in substantially greater losses to investors than failures of <$20m companies. Despite evidence of share price outperformance of smaller companies in the first year of listing, it is reasonable to believe that investors might have the expectation that larger market capitalization companies are less likely to fail, and smaller growth companies carry a higher investment risk. Consequently, the damage to market confidence is much higher when larger companies fail, and, we believe, less so when the same happens to smaller companies.

We believe the current $10 million market capitalisation threshold required to meet the assets test provides investors with adequate opportunities to invest in a range of businesses and gain exposure to numerous industries and investment themes, while other rules also ensure that ASX remains a market of quality and integrity.

In our view, efforts to maintain market quality and integrity, including investor confidence (particularly retail investors) should not only concentrate on admission requirements for listed entities, but also education and ensuring financial advisers responsible for promoting financial products are making appropriate investment recommendations based on their clients' risk profiles. Given the substantial increase in the number of self-directed investors, we believe that efforts underway in other jurisdictions to promote the provision, and availability, of independent research for IPOs, should be examined by ASX and ASIC.

We also make this recommendation as we believe raising the minimum market capitalisation threshold for the assets test would erode ASX's competitiveness as an international securities exchange. In recent years particularly, ASX's admission requirements (including the existing assets test thresholds) have been instrumental in attracting capital for technology growth companies and, historically, junior explorers.

[17] Dealogic
[18] Dealogic
[19] Dealogic
[20] Dealogic

Recommendation 5: Confirm that ASX's reference to KYC, is intended to be a reference to client identification

We note that ASX's proposed amendment to Guidance note 1, section 3.8 (page 21), has been amended to state that:

> *"any broker involved in the listing to provide details of its processes for procuring subscriptions, a list of investors from whom it has procured subscriptions and copies of its 'know your client' checks for those investors"*

The current AML/KYC laws provide an exclusion from client identification requirements for the issues of new securities. While we have no objection to client identification requirements for IPOs per se, we note that expanded KYC obligations that require a view on the appropriateness of a financial investment should not apply to execution–only brokers or electronic application facilities for IPOs. This would not be consistent with ASIC's stated goals in RG 107. We recommend that the guidance note be clarified to provide confirmation that commonly accepted online identity verification procedures will be sufficient.

Conclusion and further information

We believe our recommendations serve the objectives of improving the Australian sharemarket for all Australians, including market participants, and particularly investors and listed entities. In particular, our recommendations will increase the opportunities for retail investors to invest in IPOs, and substantially increase the amount, and diversity, of capital available to companies in the capital raising process.

We note that the average first day share price increase over the issue price of all ASX IPOs in the last ten years has been 14.8%[21]. Retail investors, and most Australians, have not had the opportunity to access this initial return. This means that retail investors that have wished to invest in those companies in the IPO would have had to pay, on average, 14.8% more than institutions, because they have only had the opportunity to buy in secondary trading.

Thank you for the opportunity to make this submission in response to the Consultation Paper. Should you or anyone else from the ASX require any further details, we would welcome the opportunity to meet with you to discuss our recommendations.

Yours sincerely

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[21] Source: Data from Dealogic