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Attention: Diane Lewis
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By email: regulatorypolicy@asx.com.au

Dear Ms Lewis

Submissions regarding the proposed changes to requirements for admission to the ASX

We refer to the consultation paper released by ASX on 12 May 2016 (**Consultation Paper**), and thank you for the opportunity to submit our views on the proposed changes to the requirements for admission to the ASX. This submission is made jointly by Price Sierakowski Corporate (**Price Sierakowski**) and Trident Capital Corporate Advisers (**Trident**).

By way of background, Price Sierakowski is a commercial law firm based in Perth, Western Australia, which specialises in corporate legal work for ASX-listed companies, including capital raisings and mergers and acquisitions. Price Sierakowski's website can be found at www.pricesierakowski.com.au.

Trident is a boutique corporate advisory and venture capital firm providing services to both public and private clients across a range of transactions and industries. Trident provides services in capital raisings, mergers and acquisitions, corporate restructures and recapitalisations, and corporate compliance and structuring. Trident's website can be found at www.tridentcapital.com.au.

Over the past 15 years, Price Sierakowski and Trident have acted in the successful recapitalisation and re-listing of dozens of companies in distress, administration or subject to a DOCA.

1. 20 cent rule waiver

Changes

ASX requires that a company seeking to list on the ASX offers shares under its prospectus at a price of at least 20 cents. However, since September 2014, ASX has

been minded to waive this rule for back door listings provided that the offer price under the prospectus was at least 2 cents.

Since the implementation of the Consultation Paper, the rules surrounding the 20 cent rule waiver have changed, such that:

- in order to obtain the waiver, the price at which the company's securities last traded on ASX must not be less than 2 cents; and

- ASX is unlikely to waive the 20 cent rule if before or after announcing the back door listing the company raises capital at less than 2 cents, or the target company raises capital at an effective price of less than 2 cents,

(**Changes**).

If a company triggers either or both of the Changes then shares offered to the public under its prospectus as part of re-complying with Chapters 1 and 2 must be no less than 20 cents each.

In practice, these Changes took effect immediately upon the release of the Consultation Paper on 12 May 2016.

Requirement to trade at a minimum of 2 cents

In our opinion, this change is counter-intuitive as companies that trade below 2 cents are generally the most in need of relief from the 20 cent rule. We consider that this change will contribute to listed companies that are in financial difficulty and trading at less than 2 cents becoming less attractive as targets for promoters and business owners seeking to list through the back door, despite being the most in need of a capital injection and a new undertaking.

This change will require all listed companies trading below 2 cents to re-comply with Chapters 1 and 2 at 20 cents or more, making back door listings less attractive and less commercially viable as pathways to listing on the ASX. This change is particularly oppressive given that a company may experience a temporary discounting of its share price (e.g. due to broader equity market influences) which does not fairly represent the company's actual business performance or value.

Importantly, when a company announces a back door listing its shares are now immediately suspended from trading. The requirement to have a trading price of at least 2 cents will invite market manipulation as companies look to maintain a share price above that threshold prior to announcing a back door listing transaction.

There is also a lack of guidance in the Consultation Paper in relation to how ASX will evaluate whether a company is trading above or below 2 cents. For example, it is uncertain as to whether volume, date, price or nature of trades are relevant.

Requirement to raise capital at a minimum of 2 cents

ASX now also takes the view that if capital is raised at less than 2 cents in the lead up to, or following, an announcement for a back door listing (including through the target), then it is unlikely to grant a waiver from the 20 cent rule.

We believe that this will indirectly oppress a company which trades at less than 2 cents because, in the event that it needs urgent working capital, it will be unable to raise funds at less than 2 cents without foregoing the ability to access the 20 cent rule waiver.

This change also unduly penalises companies which apply for admission to the ASX via the back door. As was ASX's approach prior to the Consultation Paper, we consider that such capital raisings can be made subject to ASX's escrow provisions i.e not granting quotation of the relevant securities until the transaction completes (or terminates). We believe that the escrow restrictions in Appendix 9B (including cash formula and look-through relief) are sufficient in protecting market integrity, as they apply in the same way for back door listings as they do for IPOs.

Further, there is generally a need to discount the issue price offered to seed investors due to the increased risk associated with a seed investment. Requiring seed capital to be priced at a minimum of 2 cents means that the seed investor would expect that the public offer price is above 2 cents, which effectively increases the minimum price at which a back door listing can offer securities at, and undermines the policy behind the 20 cent rule waiver.

Impact of changes on companies under administration or DOCA

A company that has entered into administration and is looking to execute a DOCA is particularly unlikely to obtain a waiver from the 20 cent rule given that such companies often trade at less than 2 cents before entering administration. With the additional likelihood that a company in administration is unlikely to have an asset that prevents it from having to re-comply with Chapters 1 and 2, the effect of the Changes will often mean the company will need to recapitalise at 20 cents.

DOCA recapitalisations require immediate capital to facilitate the transaction. By inhibiting this capacity, we consider that ASX will adversely affect a DOCA company's ability to recapitalise and access the most commonly used method of returning value to creditors and shareholders. The restriction on such a mechanism would condemn most companies in administration to proceed into liquidation. Apart from the direct negative result to all company shareholders and other stakeholders, ASX, from a business perspective, would likely lose a significant number of listed companies that might otherwise have successfully recapitalised and revitalised.

Our view

We strongly oppose both of the Changes and implore ASX to revert to the position it took with respect to the 20 cent rule waiver prior to the Changes being implemented on 12 May 2016.

The 20 cent rule waiver has been utilised extensively since its inception in September 2014 and has been applied consistently by ASX. To retain the Changes would, in our view, make the 20 cent rule waiver largely redundant. It would essentially mean the waiver is only available to companies that are trading at between 2 and 20 cents, which seems arbitrary and nonsensical without further explanation from ASX to the market.

ASX's policy objectives with respect to the Changes remain unclear and in the absence of any clear policy statement it would appear that the intention is to substantially restrict the application of the 20 cent rule waiver. We consider that this position is surprising given the long and considered process that went into adopting the 20 cent rule waiver. We note that there has been no discussion in the Consultation Paper regarding the policy behind the Changes, or many of the other changes to the guidance notes.

There are a significant number of companies seeking to re-comply with Chapters 1 and 2 which trade below 2 cents. We believe that the potential impact of these

Changes would significantly disenfranchise companies which are most likely to seek the waiver and, in doing so, undermine market integrity.

If ASX decides to retain the requirement that a company trades at a minimum of 2 cents in order to be eligible for the 20 cent rule waiver then, at the very least, the company should be permitted to consolidate its share capital to a price of at least 2 cents without comprising its ability to access the waiver.

As an alternative solution to ASX disallowing relief from the 20 cent rule waiver where capital has been raised at less than 2 cents, we suggest that ASX implements a cap on how much seed capital a company can raise in connection with its back door listing – based on a proportion of the amount to be raised under the relevant public offer (e.g. 20–30%). This may help to ensure that seed capital is only raised to the extent that it is required to fund transaction costs and working capital for the period, and not for ulterior reasons.

In our opinion, and as a result of industry feedback and, in particular, the growing volume of international businesses and assets seeking to complete back door listings on the ASX, we are concerned that ASX is in danger of losing its competitiveness as a highly regarded and reputable venture capital securities exchange. We consider that the implementation of the Changes makes ASX less attractive to those seeking to access capital, and alternative exchanges and venture markets may be preferred.

2. Transitional arrangements

We consider that appropriate transitional arrangements have not been put in place for the changes to the guidance notes, which we note were effective immediately upon release to the public on 12 May 2016.

Many of the changes have blindsided the market, which we believe has negatively impacted on the transparency and market integrity of the ASX. For example, investors may have already invested in a company with the expectation that the company would be granted relief from the 20 cent rule in accordance with the pre-12 May 2016 regime. Further, the lack of transitional arrangements in respect of these changes, and adequate disclosure, is likely to have adversely affected shareholders who had reasonably believed that a waiver from the 20 cent rule would be granted by ASX.

We have noticed that the changes have been particularly felt by both companies under DOCAs, and their promoters, in circumstances where commercial terms have already been struck with creditors and other stakeholders on the expectation that a 2 cent re-listing would be available.

We suggest that a statement be made by ASX to the effect that the proposed changes to the guidance notes will not take effect until a specified date in the future.

We appreciate being invited to comment on the proposed changes to the requirements for admission to ASX. Please contact Paul Price, Adam Sierakowski, Simon Jenkins or George Henderson of this office on (08) 6211 5000 with any related queries.

Yours faithfully

Price Sierakowski Corporate

Trident Capital Corporate Advisers