

24 June 2016

Ms Amanda Harkness
Group General Counsel
ASX Limited
20 Bridge Street
Sydney, NSW, 2000
via email: regulatorypolicy@asx.com.au

Dear Ms Harkness,

Thank you for the opportunity to provide a submission in response to the 12 May 2016 consultation paper, *Updating ASX's admission requirements for listed entities*.

The Queensland Resources Council (QRC) is the peak representative organisation of the Queensland minerals and energy sector. QRC's membership encompasses minerals and energy exploration, production, and processing companies and associated service companies. QRC works on behalf of members to ensure Queensland's resources are developed profitably and competitively, in a socially and environmentally sustainable way.

QRC members are very concerned about the impact of the ASX's proposals on the ability of the exploration industry to raise funds. The ASX consultation paper makes no mention of the JORC Code or the role it plays in helping to improve investor transparency and reduce technical risk. QRC's view is that the ASX proposals have been designed to address concerns with early-start up technology companies and that these proposals should not be applied to all listings. Rather, QRC recommends that the ASX work with the technology start-up sector to develop further guidance around appropriate means of listing for that sector.

As presented, the proposals in the ASX consultation paper will damage the ability of the exploration industry to access and raise capital through the ASX. Despite the impact of the proposed regulation falling very heavily on the exploration industry, the ASX has presented no evidence that the new proposals address any shortcomings in conduct in the exploration industry. QRC recommends that the ASX should be enhancing market standards and growing the overall market, rather than simply raising the regulatory bar.

The ASX proposals, which are designed to address shortcomings in other sectors, will limit the ability of explorers to access the ASX market when the exploration industry has a long history of working closely with the ASX.

Rather than answer each of the 15 consultation questions that the ASX pose in the consultation paper and run the risk of that engagement on detail being misconstrued as accepting a public debate over to what extent the listing rules need to be tightened, QRC simply requests that the ASX first make the case for any changes to be applied to exploration listings. In the minerals and energy exploration, production, and processing industries, QRC has seen no evidence of any listing deficiencies. QRC recommends that the ASX withdraw the proposed changes until the case for change can be presented convincingly.

QRC conducted a survey of our exploration members and unsurprisingly found widespread concerns. Almost 90% of the exploration companies surveyed indicated that, in their view, the ASX proposals would prevent exploration and junior resource companies from listing.

One QRC explorer member described the situation if the ASX proposals were enacted:

"Juniors and explorers will need to move to private equity/ sophisticated investor/ offshore markets in order to raise capital and trade. The ASX will lose out on a substantial part of their market and the Australian public will be deprived of an opportunity to invest in resources that belong to the Australian public."

A second QRC member commented:

"The current [listing] rules are tough enough and should not be made any tougher. The Banks have never funded explorers, the financial services industry has changed over last 20 years, and so it is now far more complex to raise funds."

"As a result it is IMPORTANT that raising funds not get any tougher because a capital drought could trigger a collapse in Australia's exploration activities - no funding, no exploration, no discoveries, no new mines, no new revenue for government from royalties."

Many companies commented on the links between the current national policy focus on innovation and the role that exploration companies play in providing research and development (R&D) to find the economic deposits of the future.

"R&D is important to Australia's future. The mineral/energy sector is pure R&D in the discovery stage. The ASX, for new exploration companies, is an important 'venture capital' market that has served the discovery industry in Australia well over decades. This R&D should be encouraged, not discouraged."

The comments of QRC members clearly express the concern of the exploration sector that a vital source of capital may be about to be denied to new resource listings on the basis of shortcomings from other non-traditional sectors.

Recent analysis by SNL Metals & Mining suggests that at least 212 currently ASX-listed exploration companies would fail to meet the proposed new tests. At a time when capital for exploration is already difficult to secure, it is difficult to understand the basis for such a dramatic regulatory change. The lack of alternative sources of capital in

Australian markets means that had the current ASX proposals been applied to these 212 companies (each of which is undertaking continuous disclosure) they may never have come to exist. The SNL Metals & Mining research should give the ASX pause for reflection about the case for applying the proposals to the exploration and resource sector.

The ASX consultation paper makes no mention of the implications of the proposals for currently listed companies, but QRC seeks an assurance from the ASX that any changes in listing rules won't be applied retrospectively. As an example of the concerns expressed by the exploration industry is the proposed change to the 'spread test'. Many small explorers are looking at diversifying their activities and under the listing rules (specifically 11.1 – 11.3), a change of activities may trigger the need to re-comply with the ASX's admission and quotation rules. Increases in the security parcel value to \$5,000 held by security holders to count towards the minimum spread is potentially destructive. A change in focus, for example from mineral exploration to oil and gas exploration, could trigger the requirement to re-comply, and the new requirements will make that much harder.

QRC supports the goal of the consultation paper that "*the ASX market continues to be a market of quality and integrity, and remains internationally competitive*" (page 3), yet all the feedback from QRC members is that in the exploration sector, these proposals would erode the quality, integrity and competitiveness of the ASX market.

QRC agrees with the statement that "*ASX has a long history in supporting the early stage and start-up enterprises... for many years, admission under the assets test has provided a pathway for resource entities in the exploration phase of their lifecycle to list and raise funds when other sources are not available*", (page 5). Given ASX's long history in these markets, it is difficult to understand why the consultation paper would close off this important pathway to funding for exploration.

With around 75% of listings relying on the assets test, the impacts of increasing the hurdle is likely to have a significant effect. Such a dramatic change would require the ASX to present a strong case of past poor practice and a proper cost/benefit analysis of the proposals. The ASX consultation paper presents none of this analysis.

The ASX has a unique role as a national capital market and the ASX is a co-regulator of that market. If the Queensland Government can commit to a public regulatory impact statement before making legislative change, it is difficult to see why the ASX should not perform to a similar regulatory standard.

QRC is concerned that the ASX proposals should be rigorously analysed, as the ASX is effectively a monopoly (with 99.9% of all listings by market capitalisations and 96.2% by the number of listed entities). Given this preeminent role as a capital market, any shortcomings in the ASX regulations (such as arbitrarily precluding otherwise viable exploration listings) are likely to have wider economic ramifications.

QRC would be interested to understand more from the ASX about the nature of the regulatory breaches that the proposals are designed to prevent. Does the nature of the breaches create extra workload for ASX, or are they deliberately misleading and likely to lead to investor losses? What is the magnitude of the breaches and their potential impact? What's the estimated economic consequence? Have any of these breaches occurred in the exploration sector?

The consultation paper also notes "...ASX has an absolute discretion in deciding whether or not to admit an entity to the official list and to quote its securities", (page 3). It is difficult to understand why the consultation paper doesn't present examples of where this discretion has been exercised and how the proposed changes would have better addressed the situation. Alarming, the consultation paper doesn't analyse which proposals would be captured by the proposed changes nor does it assess the costs of these increased regulatory barriers.

[ASIC](#) recently published a report, an "Assessment of ASX Limited's listing standards for equities" (14 June 2016). In its conclusions, ASIC finds that ASX has met its statutory obligations. There is no suggestion of a failing in market procedures, although there is discussion about a changing environment (eg. globalisation and international competition) and challenges relating to Listing Rules - positioning such as a 'risk' to Listing Standards (and consequentially market integrity and investment markets)

Importantly, the ASIC report highlights that since 2011-12 to 2014-15, listings from the resources sector have declined from 53% to 8%, while other listings have changed: for tech (from 2% - to 12%), healthcare (2% - 12%) and diversified financial services (4% - 17%). QRC is concerned that while the current decline in resource listings is cyclic, the proposed changes will drive a sharp sustained and structural reduction in listings from explorers and resource companies.

Unlike the ASX consultation paper, the ASIC report does acknowledge JORC "*which underpin(s) accepted disclosure principles and informed investment decisions*". However ASIC argue that new sectors are developing "*without the support of these established frameworks*" and "*arguably, without the technical expertise ASX staff have acquired over time in monitoring and enforcing disclosing and other listing rule requirements of more traditional sectors*". Once again, the ASIC report reinforces QRC's recommendation that the proposals need to apply only to these new non-traditional sectors like technology start-ups and not to the entire market.

As a critical foundation principle, the integrity of the ASX market (as it related to listed entities) is based on continuous disclosure. Implicit in the principle of continuous disclosure is that companies have an obligation to inform the market of all material matters and then it is up to investors to make individual - informed - decisions regarding investment. While clearly ASX needs to define criteria for all aspects of its business, including minimum thresholds for listing, the primary emphasis for market integrity has been on disclosure. There is no evidence that the disclosure regime has failed at the lower end of the market or for a need to raise minimum requirements. Similarly, there is no evidence of failure in the disclosure regime for the exploration sector, which is bolstered by the world-class JORC code.

To address the concerns of the resources industry, QRC has elected not to reply to the 15 consultation questions, but rather to make the following set of recommendations.

Recommendation 1. QRC recommends that the ASX proposals do not proceed, but rather that the ASX work with the technology start-up sector to develop further guidance around appropriate means of listing for that sector.

- Recommendation 2.** QRC recommends that the ASX should be enhancing market standards and growing the overall market, rather than simply raising the regulatory bar.
- Recommendation 3.** QRC recommends that the ASX present a convincing case for these proposals to be applied to exploration listings.
- Recommendation 4.** QRC seeks an assurance from the ASX that any changes in listing rules won't be applied retrospectively.

In summary, QRC members are very concerned at the proposals presented in the consultation paper and do not support them at all. The proposals appear to have been developed to address a specific issue with one sector of the capital market – the high-tech start-up firm – but without adequate consideration of how the proposals might impact on a well-established sector of the capital market – the exploration and junior resources sector which has long been a mainstay of the ASX. QRC strongly recommends that the ASX proposals do not proceed.

Thank you again for the chance to provide comments on the ASX consultation paper. If you have any questions, or would like any further information on this submission, the contact at QRC is Andrew Barger on 3316 2502 or andrewb@qrc.org.au

Please note that QRC's submission is not confidential and we would welcome the ASX making the submission public.

Yours sincerely



Michael Roche
Chief Executive