Law Council
OF AUSTRALIA

Business Law Section

26 May 2022

Mr Kevin Lewis
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Australia Square NSW 1215

By email: kevin.lewis@asx.com.au

Dear Kevin,

Submission in response to ASX's public consultation on proposed enhancements to the ASX Listing Rules: continually improving the reputation and integrity of the ASX market

1. The Corporations Committee of the Business Law Section of the Law Council of Australia (the **Committee**) welcomes the opportunity to provide feedback on the public consultation paper dated 5 April 2022 on proposed enhancements to the ASX Limited's (**ASX**) Listing Rules: continually improving the reputation and integrity of the ASX market (**Consultation Paper**).

2. As a general comment, the Business Law Section does not support all of the proposed changes.

3. The Committee has concerns with certain proposed changes related to security issuances and their potential to impact the market for secondary capital raisings in Australia negatively. That market has for many years been the envy of other jurisdictions and very recently helped many ASX-listed entities navigate their way through the difficult and uncertain environment raised by the COVID-19 pandemic.

4. In particular, the Committee is not supportive of the proposed changes to the regulation of pro rata issues. In the Committee's view, the operation of ASX Listing Rules 7.1 and 7.2 in connection with pro rata issues already strike an appropriate balance between the interests of an entity in being able to raise capital flexibly and the interests of the entity's security holders in not being unfairly diluted. The proposed changes to that exception go beyond what is necessary to protect existing security holders from dilution and provide an unnecessary fetter on how an entity's directors may choose to allocate a shortfall having regard to what is in the entity's best interests and their other duties.

5. For similar reasons, the Committee is not supportive of (but not strongly opposed to) the broadening of disclosure requirements for allocations in material placements. Those additional disclosure requirements were understandable in connection with placements benefiting from the ASX Listing Rule 7.1 placement capacity uplift provided through ASX's temporary emergency COVID-19 relief because that uplift increased the potential dilution risk for existing security holders.

However, that rationale does not hold in normal circumstances and the changes will create expectations about the manner in which placements will be conducted which may frequently be counterproductive.

6. If the additional disclosure requirements are retained, the Committee submits that the trigger for their application should be a placement comprising more than 10% of the issuer's securities, rather than a placement raising more than $50 million (or some other arbitrary figure). Setting a threshold based on a percentage of an entity's securities is consistent with the existing approach under ASX Listing Rule 7.1 and attempting to set a monetary threshold that is appropriate for all ASX listed entities would be extremely difficult (if not impossible) given the very wide range of their market capitalisations.

7. Further submissions on these and certain other proposed changes outlined in the Consultation Paper are set out in the Annexure. Where a proposed change is not expressly referenced in the Annexure, the Committee is supportive of the change.

8. The Committee would be pleased to discuss this submission if that would be helpful. Please contact Robert Sultan, Chair of the Committee at robert.sultan@nortonrosefulbright.com or +61 3 8686 6571 or David Friedlander at david.friedlander@au.kwm.com or +61 2 9296 2444 if you require further information or clarification.

Yours sincerely,

Philip Argy
Chairman
Business Law Section

Annexure – Submissions

#	Issue for consultation	Submission
1	**Security purchase plans (exception 5 in ASX Listing Rule 7.2; exception 4 in ASX Listing Rule 10.12)** Do stakeholders support the proposed rule changes for SPPs outlined in section 2.1.1 of the Consultation Paper and in particular: ▪ whether the two alternative bases proposed for conducting a scale-back on an SPP are appropriate and workable in practice – ie (1) pro rata to the size of a person's security holdings on the record date for the SPP offer (or an earlier date selected by the entity), or (2) pro rata to the number of securities a security holder has applied for under the SPP; ▪ any alternative approaches stakeholders may wish to suggest to SPP scale-backs; ▪ whether the general statement that the scale-back arrangements for an SPP may include measures to address security holders who have acquired nominal holdings so as to receive an offer, or split their holdings to receive multiple offers, under the SPP is sufficient or whether there are better or more specific mechanisms that could be built into the rules to address this issue; and ▪ whether the suggestion that has been made to ASX that one way to tackle the issue of security holders "gaming" SPPs would be to scale back SPPs initially based on the size of a security holder's holding on the record date for the plan offer (or an earlier date selected by the entity) and then, if excess securities remain after this, then scale back based on the number of securities the holder has applied for under the SPP, would be workable in practice.	The Committee does not see the proposed changes to exception 5 in ASX Listing Rule 7.2 and exception 4 in ASX Listing Rule 10.12 as necessary, and considers that mandating particular approaches to scale-back are an unnecessary fetter on directors' discretion. The Committee considers that the allocation of securities under SPPs, and the approach to scaling-back of applications, has operated effectively for many years and does not require intervention by ASX. However, if ASX was to introduce changes along the lines proposed, then the Committee considers that: ▪ The changes should make it clear that issuers should have the flexibility to adopt an "and/or" approach to scaling-back applications based on security holdings or the amounts for which a security holder applies. For example, this would enable an issuer to satisfy small applications under the SPP in full and scale-back applications for larger amounts based on the security holding of the applicant. That has historically been a common approach adopted for larger SPPs. (*By way of example only, this may allow an issuer to accept applications for up to $5,000 of securities in full, and applications above that amount would then be accepted for $5,000 plus a pro-rata amount based on their shareholding or amount applied for*). ▪ The changes would benefit from the addition of some flexibility to adopt a scale-back approach that best suits the issuer (and the circumstances of its register in particular). For example, we suggest the addition of a third alternative of a method approved

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		by ASX, which would provide the latitude to approach ASX for approval in a-typical circumstances (without having to go through the formal waiver process). ▪ There should be flexibility to disclose the scale-back arrangements to be applied either in the offer documentation or following the close of the offer. In many circumstances, it will not be appropriate for an entity to lock itself into a scale-back approach at the start of the offer. Rather, the decision on the approach to scale-back is one that is better made once details on the number and size of applications is known. In specific response to the items on which feedback is sought, the Committee notes the following: ▪ See above regarding the suggestion in respect of the "and/or" approach to the 2 alternative bases of scale-back in relation to their appropriateness. ▪ See above in relation to alternative suggestions. ▪ The general statement in relation to nominal holdings and holding splitting is sufficient. ▪ In relation to tackling gaming, the Committee considers that the proposed changes should be flexible enough to allow issuers to adopt the suggestion made (which would involve making it clear that an issuer can chose either alternative basis or both for scaling-back SPP applications). As a practical matter, to ensure compliance with the terms of the ASIC relief under which SPP

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		offers are made, issuers will usually review SPP applications to ensure that individuals do not submit multiple applications.
2	**Pro rata issues (exception 3 in ASX Listing Rule 7.2)** Do stakeholders support the proposed rule changes for pro rata issues outlined in section 2.1.2 of the Consultation Paper and in particular: ▪ whether the two alternative bases proposed for allocating the shortfall on a pro rata issue are appropriate and workable in practice – ie (1) pro rata to the size of a person's security holdings on the record date for the pro rata issue (or an earlier date selected by the entity), or (2) pro rata to the number of securities a security holder has applied for under the pro rata issue; and ▪ any alternative approaches stakeholders may wish to suggest to the allocation of a shortfall from a pro rata issue.	**General comments** The Committee is not supportive of the proposed changes to exception 3 in ASX Listing Rule 7.2. In the Committee's view, the operation of ASX Listing Rules 7.1 and 7.2 in connection with pro rata issues already strike an appropriate balance between the interests of an entity in being able to raise capital flexibly and the interests of the entity's security holders in not being unfairly diluted – that being ASX's stated aim for those rules.[1] By its nature, a pro rata issue ensures that all existing security holders have the opportunity to participate in the issue and to maintain their proportionate equity interest in the entity.[2] Therefore, an entity's board should not be required (or incentivised)[3] through the operation of the ASX Listing Rules to provide existing security holders with a priority opportunity to acquire any shortfall on a pro rata issue if allocating the shortfall to existing security holders would not be in the entity's best interests. Additionally, the Committee is not aware of similar requirements in relation to the allocation of a shortfall for a pro rata issue being imposed by a regulator in any major overseas jurisdiction.

[1] See ASX Guidance Note 21.
[2] Excluding certain foreign security holders who may be excluded in accordance with ASX Listing Rule 7.7.
[3] Pro rata issues often involve entities issuing a number of securities that would exceed their ASX Listing Rule 7.1 placement cap if the issue were not caught by an exception in ASX Listing Rule 7.2. If the proposed change to exception 3 in ASX Listing Rule 7.2 is made, it would effectively require all entities in that circumstance to agree to allocate any shortfall to their existing security holders on a priority basis to fall within that exception. That is because they will not know the size of the shortfall on launch (and therefore whether the shortfall would fit with their placement cap) and practically would not be able to obtain security holder approval to exceed the cap.

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		Factors that should be considered when determining shortfall allocations There are various factors that a board should consider when determining how to allocate a shortfall which may mean that it is not in the entity's best interest for the shortfall to be allocated to existing security holders on a priority basis. Those factors include: ▪ how the allocation policy will impact on the entity's ability to have the pro rata issue underwritten and the cost of that underwriting. Requiring a shortfall to be allocated to existing security holders on a priority basis is likely to impact on an underwriters' ability to manage its risk in relation to an offer (including through sub-underwriting) which could in turn increase the cost of the underwriting (see below for further details); ▪ whether there are benefits in using the shortfall to bring new investors onto the entity's register that are likely to be long-term holders; and ▪ whether providing a priority allocation to existing security holders could entice existing security holders who are 'overweight' in the entity's securities or are not long term holders, to acquire additional securities where they otherwise would not (with a view to selling down the additional stake quickly) which will potentially have negative consequences for the entity's security price in the short term. In the Committee's view, shortfall allocations are usually a business judgment made by issuers (with advice from their advisers) in good faith and for a proper purpose, with no material

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		personal interest, and where that is not the case there are other consequences boards may face which mean that ASX intervention is not required. **Practical concerns with the proposed changes** In addition to the policy concerns outlined above, the Committee also has a number of practical concerns with the proposed changes. First, the proposed changes lack clarity on how ASX expects the priority opportunity to be applied for an accelerated pro rata issue where there are 2 potential shortfalls – one following the institutional component and one following the retail component. It is assumed that ASX will expect an entity to give priority to existing institutional security holders in the institutional shortfall and existing retail security holders in the retail shortfall, because retail security holders do not ordinarily have the ability to participate in an offer on the same accelerated basis as institutional security holders. However, that is not clear from the drafting and would result in different shortfalls being available to each category of security holder. Second, as currently drafted, the proposed change will require issuers to offer a retail oversubscription facility for renounceable offers. In our experience, that would be very unusual in the Australian market because it would require an issuer to navigate a range of complex issues – including the competing interests of renouncing holders and holders participating in the facility, and the fact that retail holders would be required to apply for a shortfall allocation before the shortfall issue price is known. There *are* examples in renounceable offers. However, they are rare

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		examples and require consideration of a number of complex issues (eg the recent Air New Zealand rights offering where the NZ government took up its majority share of the offer). Third, the pricing of any retail oversubscription securities for a renounceable offer may result in negative outcomes. Due to the need to compensate non-participating holders in full for the increment between the offer price and the final bookbuild price, retail holders participating in any oversubscription must participate at that bookbuild price. It may not reflect market dynamics in the after-market and an unsophisticated group of investors may be unable to assess that correctly. We have concerns over the potential for market misalignment in that instance. Fourth, the majority of retail oversubscription facilities for rights issues cap the amount each holder can apply for to help manage the shortfall allocation process and avoid perverse outcomes, but that practice is not expressly permitted by the proposed changes. Fifth, as noted above, the sub-underwriting dynamics of a non-renounceable pro rata issue will be impacted significantly where sub-underwriters are unable to get any sense of the level of "natural shortfall" at the time sub-underwriting commitments are obtained. Specifically, as ASX knows, a material proportion of retail investors commit to pro rata issues (and SPPs) using BPAY immediately following close of market on the closing date of the offer period. If there is value in allocations, then they hit the bid, whereas they may not if the offer securities are out of the money. That is fine for a retail security holder's pro rata allocation and the sub-underwriting market adjusts to it. However, it is different if a large body of securityholders can access an over-allocation. It

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		would mean a disproportionate change to the likely shortfall amount based on a spot price that is evident weeks after sub-underwriting commitments are obtained. The impact will mean that it is materially harder to obtain underwriting for pro rata non-renounceable issues (or the offer price will need to be at a greater discount or the underwriting will need to be at a greater cost, or both) because the pricing and availability of sub-underwriting will be adversely affected. **Other alternatives to the proposed changes** If ASX believes some further regulation of shortfall allocations is required and it proceeds with the new allocation disclosure requirements for material placements, the Committee submits that it should consider extending those disclosure requirements to shortfall allocations in pro rata issues instead of the proposed changes to exception 3 in ASX Listing Rule 7.2 outlined in the Consultation Paper. The Committee would also have no concerns with ASX updating ASX Guidance Note 21 to include guidance on what ASX views as best practice in relation to shortfall allocations in place of implementing the proposed changes. Finally, if ASX does introduce the proposed changes, then ASX should: ▪ go with alternative (1) – ie allocation by reference to a person's holding not what they have applied for. Allocation by reference to application amount incentivises small holdings in entities by parties who are not natural holders of securities who want to be able to purchase securities at a discount and then quickly resell them (and therefore the same problem identified above

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		regarding existing security holders who are not long-term holders); ▪ limit the requirement to non-renounceable offers given retail oversubscription facilities are not, for good reason, common for renounceable offers in Australia; ▪ expressly permit issuers to cap the amount each retail holder can apply for under a retail oversubscription facility for a rights issue to help manage the shortfall allocation process and give more certainty to the sub-underwriting process (eg cap at up to 25% of their existing holding); ▪ include a new exception in ASX Listing Rule 10.12 so that existing security holders caught by ASX Listing Rule 10.11 can participate in the shortfall without obtaining security holder approval, where the shortfall is allocated on a pro-rata basis by reference to a security holder's holding; and ▪ provide further clarity on how ASX expects the priority opportunity to be applied in the context of an accelerated offer.
3	**Material placements (Proposed new ASX Listing Rule 7.10)** Do stakeholders support the new disclosure requirements proposed in rule 7.10 for material placements by way of a non-pro rata offer mentioned in section 2.1.3 of the Consultation Paper, including the appropriateness of the thresholds for the application of that rule that the offer: (a) comprise more than 10% of the number of ordinary securities the entity has on issue at the commencement of the offer, or (b) is for an	The Committee is not supportive of the broadening of disclosure requirements for allocations in material placements. Those additional disclosure requirements were understandable in connection with placements benefiting from the ASX Listing Rule 7.1 placement capacity uplift provided through ASX's temporary emergency COVID-19 relief because that uplift increased the potential dilution risk for existing security holders. However, that rationale does not hold in normal circumstances and the changes

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	aggregate issue price of more than $50 million (whichever is the lesser).	will create expectations about the manner in which placements will be conducted which may frequently be counterproductive. The purpose of providing entities with a 15% placement capacity is to balance: ▪ the (understandable) desire of security holders to be able to participate on a pro rata basis in *every* capital raising to avoid dilution; and ▪ the commercial benefit of providing entities with the benefits that come from placements such as quicker raising timetables (which, among other things, allows issuers to receive funds more quickly which is beneficial for both balance sheet repair transactions as well as competitive acquisition financing, and can also result in lower discounts and lower underwriting costs) as well as the ability to diversify the securities register. The proposed new ASX Listing Rule 7.10 risks creating an expectation or perception that existing security holders have an "entitlement" to participate in placements when that is precisely the opposite of what ASX Listing Rule 7.1 has required. We distinguish this from the allocation disclosure requirements in the exceptional circumstances of the COVID-19 pandemic when there was a temporary significant increase in placement capacity where the uplift increased the potential dilution risk for existing security holders – this is not the case here. So, although entities will still have the choice to allocate how they like (subject to meeting the new disclosure requirements), the

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		Committee is concerned that the inclusion of ASX Listing Rules 7.10 (and in particular, ASX Listing Rules 7.10(a) and (b)(ii)) will create an unrealistic expectation that placements will be allocated on a "pro rata" basis in all cases. There are numerous instances where it will be in the best interests of an entity not to allocate a placement "pro rata", such as when: ▪ undertaking strategic placements to one or a small number of supportive security holders or new investors (for example, to diversify a register and improve liquidity where there is a major security holder); or ▪ there is an investor who can provide cornerstone support for a placement that the entity might otherwise be having difficultly completing without that support (eg, a new investor who anchors a wall-crossing process). There are also practical issues with trying to determine a holder's "pro rata" allocation for placements. Usually this is based off outdated beneficial share registers and unlike in the case of accelerated rights issues, there is not the time to work with institutional holders to reconcile their current holdings with the issuer's records so any allocation process is a best guess. The Committee also questions the utility of the additional disclosure about the approach taken to determine allocations required by ASX Listing Rule 7.10(b)(ii) and suggests it is likely this will lead to the development and use of "form" disclosures which add little to transparency over the allocation process. We also note that entities are already required to disclose in response to Appendix 3B question 392 "why the entity has chosen to do a placement rather than a pro rata issue or an offer under a security

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		purchase plan in which existing ordinary security holders would have been eligible to participate", which really goes to the same issue. If ASX does go ahead with introducing ASX Listing Rule 7.10 (which for the reasons we submit above, is not something the Committee supports), we make the following suggestions: ▪ **Material Placement':** If the underlying policy concern is that "larger" placements require greater transparency over the allocation policy adopted, basing this on the proportion that the placement bears to the current market capitalisation of that issuer as distinct from some absolute dollar offer size is the most appropriate approach. Accordingly, we consider that the materiality threshold should be solely a percentage of the number of ordinary shares the company has on issue at the commencement of the placement rather than the lower of 10% and a $50 million placement size. We have no objection to the 10% threshold suggested by ASX. We would also add that an aggregate dollar value of $50 million is a relatively small threshold for larger companies, particularly those in the S&P/ASX 200 index and will likely look even smaller in the future assuming the long term trend of the growth of the companies listed on ASX continues. ▪ **Type of raising:** ASX Listing Rule 7.10 should be confined to placements of ordinary securities so that it is clear it is not required to apply to other non-pro rata raising structures such as SPPs, DRPs or scrip consideration and so on.

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		▪ **Unnecessary requirements:** The Committee suggests ASX Listing Rule 7.10(a) could be removed (since it is standard to indicate who may / may not participate in the announcement of the offering), as well as the proposed ASX Listing Rule 7.10(b)(i) requirement to disclose the results of the offer (which is already required by the continuous disclosure obligations read together with ASX Guidance Note 8, in particular the discussion about outcomes of bookbuild processes). There are also the obligations to provide the information in the Appendix 3B and Appendix 2A. ▪ **Additional drafting suggestion:** In ASX Listing Rule 7.10(a), the reference to 'securities' should be to 'ordinary securities' (eg for consistency with the lead in wording in ASX Listing Rule 7.10).
4	**Financial reporting (Proposed new ASX Listing Rule 17.5A)** Do stakeholders support the proposed new rule 17.5A mentioned in section 2.2 of the Consultation Paper providing for the suspension of an entity that lodges accounts or quarterly cash flow statements that are not "compliant" and any feedback that stakeholders may have on the proposed definition of "compliant" for these purposes.	The Committee is generally supportive of the changes to the financial reporting obligations set out in section 2.2 of the Consultation Paper (which are generally consistent with the current expectations of ASX included in ASX Guidance Note 23). The Committee queries the benefits of an automatic suspension where an entity lodges quarterly cash flow reports which are not "compliant". As ASX policy has generally been to keep trading interruptions to a minimum, there may be circumstances where an automatic suspension is triggered for immaterial or technical non-compliance. We note that the Australian Accounting Standards do provide a definition of what constitutes "compliance", and while there may well be circumstances where suspension as a result of non-compliance can be justified (eg where the auditor gives a qualified opinion or disclaimer or there is a complete failure to lodge the quarterly cash flow reports) there may also be financial

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		disclosure that is technically non-compliant with accounting standards or presentation, but that is non-material or has been accepted by ASX (and ASIC) as part of the admission of the entity. In circumstances of non-material non-compliance, provided the market can adjust to the information in those reports (and assuming such information is prepared appropriately to begin with), the need for suspension might not be immediately warranted. As ASX Guidance Note 23 notes, ASX can and will review quarterly reports for clearly significant issues (such as a concern that the entity may have insufficient cash flows for its business, as set out in paragraph 12 of ASX Guidance Note 23), and while the imposition of an automatic suspension might provide administrative ease for ASX, the Committee considers that any suspension (whether automatic or otherwise) should be limited to material breaches of the accounting standards. So either the non-compliance trigger should be discretionary or defined to include only material non-compliance. In relation to other changes proposed in section 2.2 of the Consultation Paper: **The requirement for the inclusion of a "true and fair view" statement in the new ASX Listing Rule 19.11(c) should be qualified** The requirement in proposed new ASX Listing Rule 19.11(c) for cash flow reports to contain a statement by the issuer's board, audit committee, CEO, CFO or another authorised officer that it has been prepared to the standards referred to in the ASX Listing Rules, and gives a *true and fair view*, is not inconsistent with ASX's current expectations expressed in ASX Guidance Note 23.

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		However, as: (i) a '*true and fair view*" might imply a level of assurance typically associated with an audit, those providing that confirmation should be able to clarify the basis upon which they have formed that view (eg whether or not they have done so with or without the assistance of the entity's auditors); and (ii) section 295A of the *Corporations Act 2001* (Cth) similarly requires a '*true and fair*' statement in the officer's declaration for an entity's financial statements, but allows persons making such declaration to make other statements which support the basis of their 'true and fair' statement, we suggest the statement under new ASX Listing Rule 19.11(c) can include and be framed by the steps taken to support the statement (as is currently contemplated in the notes to the cash flow statement included in Note 5 in Appendix 4C). **Wording change to the new ASX Listing Rule 19.11(a)** As minor drafting observations: (i) the proposed new ASX Listing Rule 19.11(a) requires that "*if the entity controls a child entity or is the holding company of another entity, the report must be a consolidated statement of cash flows*". As the term "statement of cash flows" is already within the definition of "accounts", and should now be treated as separate from "cash flow reports", ASX could consider revising the relevant wording to enhance clarity; and

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		(ii) the proposed new ASX Listing Rule 19.11 contains the phrase '*…the following rules apply*' which should be revised to '*… the following rule applies*'.
5	**Termination Benefits (ASX Listing Rules 10.18 and 10.19)** Do stakeholders have any issues or concerns with the current versions of rule 10.18 and 10.19 and also on whether they support the amendments that ASX is proposing to rule 10.18.	The Committee supports the proposed amendments to ASX Listing Rule 10.18 as a sensible and proportionate reform. Allowing termination benefits in circumstances of a change of control where those benefits have been approved by security holders – with the consequent need to make disclosure of all information material to the members' decision whether or not to approve, is in our view a reasonable appropriate policy setting, bringing ASX more closely into line with international practice.
6	**Shareholding restrictions in constitutional docs (ASX Listing Rules 15.14 and 15.15)** Do stakeholders support the proposed changes to rules 15.14 and 15.15 mentioned in section 2.6 of the Consultation Paper restricting the circumstances in which a listed entity may include in its constitution provisions purporting to regulate takeovers and substantial holdings.	The Committee is supportive of these proposed changes and has no comments. However, we query whether a transitional period should apply for the changes so that any entities who do not currently comply with the new requirements have time to amend their constitutions to ensure they are compliant (noting amendments to a constitution will require security holder approval).
7	**Admission and quotation requirements (section 2.3 of the Consultation Paper)**	The Committee is generally supportive of these changes, however, makes the following comments on several of the updates proposed to the conditions of listing in ASX Listing Rule 1.1 to provide greater transparency for the market about ASX's minimum expectations and to reduce any unnecessary administrative burden:

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		▪ **condition 1, governance arrangements:** The requirement that the entity must have governance arrangements suitable for a listed entity is a departure from ASX's current position on corporate governance arrangements which require disclosure against the Corporate Governance Principles and Recommendations on an "if not why not basis". In ASX Guidance Note 9 para 4, ASX sets out its current position which is that corporate governance arrangements are a matter for the board, security holders and the investment community. If the proposed change is made it would be desirable in the interests of transparency for ASX Guidance Note 1 and ASX Guidance Note 9 to be amended to include guidance on the types of arrangements that would be acceptable or not acceptable to enable entities and their advisers to understand the minimum requirements expected by ASX. ▪ **condition 1, system of corporate law and regulation:** The current position is that ASX Guidance Note 1 para 3.22 requires disclosure of the rights and obligations of security holders under the law of the entity's home jurisdiction. The proposed change would include an explicit requirement that ASX be satisfied that the home jurisdiction has a suitable system of corporate law and regulation. If this change is made it would be desirable in the interests of transparency for ASX Guidance Note 1 para 3.22 to be amended to set out ASX's minimum requirements for the legal system of a home jurisdiction to be acceptable, as well as include a list of any home jurisdictions that ASX ordinarily considers acceptable.

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		▪ **condition 8 – spread:** Whilst we appreciate ASX's desire to manage how the spread requirements are being met, given that it is relatively common for IPOs to be extended to retail and institutional investors in New Zealand (particularly given the Mutual Recognition Regime), the Committee submits that New Zealand should be added to Australia as a jurisdiction from which spread can be met without the need to seek a confirmation from ASX as to the acceptability of New Zealand as a jurisdiction. ▪ **condition 13 – person responsible for communication with ASX:** In a similar vein to our submissions on the proposed amendments to condition 1, if ASX is to have a broader discretion to reject persons responsible for communication with ASX, entities and their advisers would benefit from greater transparency about the minimum requirements ASX has for those persons. In addition to a person who has completed an approved ASX Listing Rule compliance course there should be scope for ASX to consider acceptable a person who has undertaken the role of communicating with ASX satisfactorily in the past, for example a long-standing company secretary. The tests in ASX Guidance Note 1 para 3.15 (high degree of familiarity with the listed entity's operations, being able to instigate a trading halt and initiate a market announcement on short notice) and perhaps an additional test of having a sound understanding of the ASX Listing Rules could be included as further guidance. Finally, the Committee would like to take this opportunity to strongly endorse the change to ASX Listing Rule 1.3.2 to allow commitments test entities who have an acceptable track record of revenue or profitability to be absolved from the need to provide

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		quarterly cash flow reports and activity statements. This removes an anomaly in that these entities are not considered to be so early in their development as to require mandatory escrow but otherwise are still required to provide detailed cash flow reporting for at least their first two years of listed life. This will reduce red tape.
8	**Changes to convertible** securities (exception 9 in ASX Listing Rule 7.2 and exception 7 in ASX Listing Rule 10.12)	The Committee is supportive of the proposed changes to exception 9 in ASX Listing Rule 7.2 and exception 7 in ASX Listing Rule 10.12. However, the Committee submits that the proposed qualification to those exceptions should only apply to material alterations to the terms of convertible securities that impact the conversion of those securities (e.g. changes that increase the number of securities provided on conversion or the circumstances in which conversion occurs). Other changes to the terms of convertible securities should not impact on the availability of those exceptions given the policy rationale for ASX Listing Rules 7.1 and 10.11.
9	**Miscellaneous enhancements (section 2.6 of the Consultation Paper)**	The Committee is supportive of these proposed changes and has no comments.