



Sydney Stock Exchange Limited
Bridging Australian and Asian Capital Markets

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Mr Ben Phillips
Senior Lawyer, Corporations
Australian Securities and Investments Commission
Level 20
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BY EMAIL: policy.submissions@asic.gov.au

Dear Mr Phillips,

ASIC Consultation Paper 239 – Disclosure documents: Update to ASIC instruments and guidance

Thank you for the opportunity to comment upon Consultation Paper 239 (CP239).

Please find attached the Sydney Stock Exchange submission. Should you wish to discuss any aspect of the submission, please do not hesitate to contact the undersigned on +61 2 9215 2840 or david.lawrence@apx.com.au.

Yours sincerely,

David Lawrence
Chief Operating Officer



SYDNEY STOCK EXCHANGE SUBMISSION – CP 239 DISCLOSURE DOCUMENTS: UPDATE TO ASIC INSTRUMENTS AND GUIDANCE

DEFINITIONS USED IN THIS SUBMISSION

- (a) **CP 239** means Consultation Paper 239 –*Disclosure documents: Update to ASIC instruments and guidance*;
- (b) **Act** means the *Corporations Act 2001* and the regulations made pursuant to it; and
- (c) All capitalized terms not otherwise defined shall have the meaning as set out in the **CP 239**, the relevant ASIC rules or the Act as applicable.

EXECUTIVE SUMMARY

Below is a summary of some of the key points made in our submission in response to CP 239. However, our submission should be considered in full for these and all our other comments in response to CP 239.

1. Sydney Stock Exchange has reviewed the materials and makes submissions in relation to a number of the questions contained in the CP 239.
2. We note that Paragraph 2 of Part A in CP 239 sets out that the purpose of sunseting is to ensure that the instruments are kept up to date and only remain in force while they are fit for purpose, necessary and relevant.
3. As a general observation, we submit that one aspect of the review which is generally not up to date and fit for purpose is in relation to competition and regulation neutrality with regard to the provision of listing market services. In many respects the drafting remains ASX-centric notwithstanding that there are 4 prescribed listing markets in Australia (ASX, Sydney Stock Exchange, NSX and SIM).
4. It is a clear government policy to promote competition for listing and trading services in the market. Sydney Stock Exchange endorses that policy position. In order for there to be effective competition for listing and trading services, the regulatory environment must provide for a level playing field between market operators. A level playing field for trading services is materially provided by way of the various ASIC Market Integrity Rules (“MIRs”) which regulate the market related activities of market participants and market operators. In the context of listing services, there is no consolidated equivalent of the MIRs regulating the market related activities of listed entities and market operators. The relevant framework is provided in various ASIC Regulatory Guides and Class Orders. Many of these ASIC Regulatory Guides and Class Orders have been drafted to be specific to the ASX market. We submit that, in order for there to be effective competition for listing services, the various ASIC Regulatory Guides and Class Orders should be drafted to be agnostic to a relevant listing market, and should instead apply equally to all listing market operators.



5. The continued references to ASX in ASIC documentation serves to reinforce market perception that ASX is the only listing venue in Australia. Whilst each reference in itself is an issue, the totally of references solely to ASX reinforces the entrenched market perception and serves to act as an ASIC endorsement of the ASX market to the commercial benefit of ASX. Sydney Stock Exchange has invested, and is continuing to invest, considerable time and effort in breaking down this perception and changing the linguistics of listing in Australia.
6. As many of the ASIC Instruments may continue to exist for up to 10 years, we believe it is a poor policy outcome to not, as stated, be updated and made fit for purpose having regard to the current and future environment.

DETAIL

RESPONSE TO SPECIFIC ASIC QUESTIONS IN CP 239 - DISCLOSURE DOCUMENTS: UPDATE TO ASIC INSTRUMENTS AND GUIDANCE

ASIC Question B1Q1: Do you agree with our proposal to make a legislative instrument to synchronize the relevant time periods for all applicants under an offer? If not, why not?

7. Sydney Stock Exchange agrees with the proposal.

ASIC Question B1Q2: Do you agree with our proposal to introduce a process for extending the minimum subscription condition and quotation condition time periods? If not, why not?

8. Sydney Stock Exchange agrees with the proposal. Sydney Stock Exchange notes that the minimum subscription condition (with a 4 month period) and the quotation condition (with a 3 month period) could both apply to an entity seeking to raise capital which is to be quoted on a financial market.
9. However, as a general rule, a prescribed financial market will not grant an entity's quotation until such time as minimum subscription has been attained the practical impact is that the 3 month period, in fact, applies to both conditions.

ASIC Question B1Q3: Do you agree with our proposal to require prescribed information and statements to be used to activate a refresh document? If not, why not?

10. Sydney Stock Exchange agrees with the proposal in principle. However, we submit that there are some issues that need to be considered to make the concept of "refresh document" more practicably operative.
11. As pointed out in the abovementioned paragraph 9, it is the common requirement of the prescribed financial markets in Australia to quote a stock on the condition that the minimum



subscription is attained if the offering document (prospectus/PDS) contains the terms to the effect that the offer is subject to minimum subscription condition.

12. It is possible that a disclosure document is subject to a quotation condition but not a minimum subscription condition. It is less likely, but possible, that a disclosure document is subject to a minimum subscription condition but not a quotation condition. This appears to be recognised in the separate drafting of proposed subsection 724(3A) and (3C). However, the definition of a “refresh document” requires that the disclosure document is subject to a quotation condition and a minimum subscription condition. We therefore query whether this is correct and whether the “and” at the conclusion of clause (a)(iii) of the definition of “disclosure document” should be an “or”.
13. With respect to the proposed insertion of (3F) to subsection 724(3) of the Corps Act, the mechanical interpretation of (3F) of Section 724(3) would result in requiring an entity that makes an offer subject to both minimum subscription and quotation condition to submit two refresh documents addressing the matters about minimum subscription and quotation condition respectively. This could arise as a consequence of the differing 3 and 4 month timeframes. This is an undesirable outcome and is not aligned with the policy objective behind CP 239 which is primarily to facilitate the capital raising process in Australia.
14. We recommend additional subsection (d) to be added to (3F) of subsection 724(3) in relation to the prescribed information required to validate a refresh document for an offer of securities subject to BOTH a minimum subscription condition and a quotation condition. The additional clause should be worded to allow the entity who is making an offer that is subject to both conditions (minimum subscription and quotation) to issue just one refresh document at the earlier point of time prior to the relevant period for each of the condition lapses. The refresh document issued in these circumstances should incorporate all the information prescribed in section 3F for an offer that is subject to minimum subscription and an offer that is subject to quotation condition.
15. Whilst we appreciate the intent of the inclusion of the statement to the effect that applicants have 1 month to withdraw their application and be repaid (the “repayment condition”), we have reservations about the practical impact of the requirement. In effect, the repayment condition sets a minimum refresh period of 1 month and a maximum of 3 months for a person applying for quotation on a prescribed financial market. The practical implication is that neither the minimum subscription condition nor the quotation condition could be satisfied within that initial 1 month repayment condition period, hence the offer cannot be closed until the expiry of the repayment condition period. Hence we submit that, if the repayment condition is retained, the following amendments to the Instrument be made:
 - the statement to the effect that applicants have 1 month to withdraw their application and be repaid also include the date and time by which withdrawal applications must be received by the person; and



- additional disclosure be included in (c) to the effect that the earliest the offer can close is one month after the date of the refresh document.

ASIC Question B1Q4: Are there any other conditions or requirements that should apply to our modification?

16. Sydney Stock Exchange agrees with the proposal in principal with the below recommendation.

17. Section 711 (6) of the Corps Act stipulates “.... The expiry date (the prospectus) must not be later than 13 months after the date of the prospectus. The expiry date of a replacement prospectus must be the same as that of the original prospectus it replaces”. As a refresh document would trigger the resetting of the relevant complying period for an offer that is subject to minimum subscription or/and quotation condition, logically the expiry date of a refreshment document should be 13 months after the date of the refresh document is issued. Currently, the Corps Act, when read in conjunction with the proposed ASIC Instrument, does not give a clear idea when the offer document expires if a refresh document is used. Therefore, we suggest the proposed ASIC Instrument (Minimum Subscription and Quotation Condition) should be revised to also modify s711(6) of the Corps Act to stipulate the expiry date of the refresh document is 13 months after the date of the refresh document instead of the disclosure document it refreshes.

ASIC Question B2Q1: Do you have any comments on our proposal to provide disclosure an on –sale relief for offers of bank hybrids?

18. Sydney Stock Exchange agrees with the proposal.

19. We note that the proposed instrument applies to “prescribed financial markets” which are defined in Regulation 1.0.02A to include Sydney Stock Exchange.

ASIC Question C1Q1: Do you agree with our proposal to reissue and consolidate {CO 02/141, [CO 07/429] and [CO 13/523]? If not, why not?

20. Sydney Stock Exchange agrees with the proposal in principal.

21. However, we have significant concerns with the proposed drafting of ASIC Corporations (Consents to Statements) Instrument 2015/XX.

Proposed section 636(3B)

22. Proposed section 636(3B) gives relief in relation to historical geological reports which are available for inspection or acquisition from ASX Limited.

23. Sydney Stock Exchange is, and has been for over 2 years, in the process of introducing new listing rules specific to disclosures by companies in the mining and oil & gas sectors. Sydney Stock Exchange has had extensive liaison with the Financial Market Infrastructure and the



Emerging Mining and Resources units of ASIC throughout this period. Subject to the normal Ministerial disallowance process, the new Listing Rules will take effect on 14 December 2015. The relevant listing rules are of equivalent standard, if not a higher standard, than those of ASX Limited. All disclosures by mining and oil & gas listees on the Sydney Stock Exchange market will be available on the Sydney Stock Exchange website.

24. We submit that the specific reference to ASX in the Instrument is too limited and restrictive to the extent that it does not recognise that historical geological reports may be available from markets other than ASX; anti-competitive to the extent that it does not recognise the changed market circumstances and the emerging competition for the provision of listing market services; and does not recognise the new Sydney Stock Exchange listing rules for the mining and oil & gas sectors.
25. Sydney Stock Exchange acknowledges that the listing rules specific to disclosures by companies in the mining and oil & gas sectors on the NSX market may not be of the same standard of those on ASX and Sydney Stock Exchange.
26. Subject to ASIC's view of the quality of disclosures by companies in the mining and oil & gas sectors on the NSX market, Sydney Stock Exchange submits that proposed section 636(3B)(b)(ii) should refer to either "ASX Limited and Sydney Stock Exchange Limited", or to "a prescribed financial market".

Proposed section 636(3C)

27. We note that the proposed section 636(3C) applies to "prescribed financial markets" which are defined in Regulation 1.0.02A to include Sydney Stock Exchange.

Proposed section 636(3D)

28. We note that the proposed section 636(3D) defines a "geological report". The persons who can prepare a report are limited to a Member or Fellow of AusIMM or AIG. Historically in the Australian market and under the ASX listing rules, reports prepared by Members or Fellows of AusIMM or AIG have been prepared in accordance with the JORC Code.
29. There are 3 existing issues with the proposed drafting.
30. First, reports released to the Australian market can be prepared by persons other than Members or Fellows of AusIMM or AIG under the existing JORC framework and as implemented by both ASX and Sydney Stock Exchange. Under the JORC framework, and as set out on the JORC website¹, any public reporting of exploration results, mineral resources or ore reserves must be based on and fairly reflect documentation prepared by a Competent Person

¹ www.jorc.org



in accordance with the JORC Code. A Competent Person must be a Member or Fellow of The Australasian Institute of Mining and Metallurgy, or of the Australian Institute of Geoscientists, or of a 'Recognised Professional Organisation'. The list of Recognised Professional Organisations appears on the JORC website.

31. As a JORC report can be prepared by a person who is not a Member or Fellow of The Australasian Institute of Mining and Metallurgy, or of the Australian Institute of Geoscientists, the current drafting would not provide relief in relation to such reports, meaning such reports either could not be referenced or the consent of the author would be required.
32. We submit that the scope of the relief should be extended accordingly.
33. Second, the relief only relates to the mining industry. It does not extend to geological reports relating to the oil & gas sector. Geological reports relating to the oil & gas sector are required to be prepared in accordance with the SPE-PRMS code by persons who are not necessarily a Member or Fellow of The Australasian Institute of Mining and Metallurgy, or of the Australian Institute of Geoscientists.
34. Third, as referred to above Sydney Stock Exchange is, and has been for over 2 years, in the process of introducing new listing rules specific to disclosures by companies in the mining and oil & gas sectors. The scope of the Sydney Stock Exchange rules extends beyond the JORC Code to also include the Canadian NI 43-101 and CIM standards and the South African SAMREC standards.
35. Hence, as it will be the case that geological reports released to the Australian market could be prepared under the JORC Code, Canadian NI 43-101 and CIM standards or the South African SAMREC standards and hence be prepared by a Member or Fellow of The Australasian Institute of Mining and Metallurgy, or of the Australian Institute of Geoscientists, or of a 'Recognised Professional Organisation' we submit that the scope of the relief should be extended accordingly.
36. The new Sydney Stock Exchange listing rules specific to disclosures by companies in the mining and oil & gas sectors have been issued and subject to Ministerial disallowance will take effect on 14 December 2015. Failure to recognise their implementation in the drafting of the proposed Instrument will create future administrative and "red tape" issues in future.

Proposed section 638(5B)

37. The same issues arise in relation to proposed section 638(5B) as referred to above regarding proposed section 636(3B) and proposed section 636(3D) as the defined terms in proposed section 638(5D) rely upon the definitions in 636(3D).

Proposed section 638(5C)



38. We note that the proposed section 638(5C) applies to “prescribed financial markets” which are defined in Regulation 1.0.02A to include Sydney Stock Exchange.

Proposed section 716(2A)

39. The same issues arise in relation to proposed section 716(2A) as referred to above regarding proposed section 636(3B) and proposed section 636(3D) as the defined terms in proposed section 716(2A) rely upon the definitions in 636(3D).

Proposed section 716(2C)

40. We note that the proposed section 638(5C) applies to “prescribed financial markets” which are defined in Regulation 1.0.02A to include Sydney Stock Exchange.

Proposed section 1013K(1B)

41. The same issues arise in relation to proposed section 1013K(1B) as referred to above regarding proposed section 636(3B) and proposed section 636(3D) as the defined terms in proposed section 1013K(1B) rely upon the definitions in 636(3D).

Proposed section 716(2C)

42. We note that the proposed section 638(5C) applies to “prescribed financial markets” which are defined in Regulation 1.0.02A to include Sydney Stock Exchange.

43. Finally, with respect to citing “*statements by official persons, or in books, journals etc*” in the Bidder’s Statement/Target Statement without obtaining consent from the relevant party(ies), as there might be circumstances when the statements that the bidder or the target proposes to include or make reference to in the Bidder’s Statement/Target Statement, as the case may be, could be outdated due to the fact that substantial period of time has lapsed, exemption granted in respect of “statements by official persons, or in books, journals” should be further qualified. Suggested wording is as follows:

(3A) Subsection (3) does not apply to a statement that:

- (a) Fairly represents what purports to be a statement made by an official person; or
- (b) Is a correct and fair copy , or extract from, what purports to be a public official document; or
- (c) Is a correct and fair copy of, extract from, a statement which has already been published...;

Provided that:

- (e) that the statement was not made, or published, in connection with the takeover bid...; and
- (f) the statement is deemed to be current and appropriate to be included in the bidder’s statement.

ASIC Question C2Q1: Do you agree with the minor change we have proposed in relation to the notionally inserted s 1013K (1B)(d)(v)?



44. Sydney Stock Exchange agrees with the proposal in principal.
45. However, we have significant concerns with the proposed drafting of ASIC Corporations (Disregarding Technical Relief) Instrument 2015/XX. This primarily relates to the definition of “technical relief instruments”.

ASIC Class Order [CO 98/104]

46. This Class Order relates to dual lodgment relief for listed entities. It is currently drafted to be ASX specific. This Class Order is being revised and is subject of ASIC Consultation Paper CP343 with the intent that it be extended to other licensed market operators, including Sydney Stock Exchange.

ASIC Class Order [CO 99/90]

47. According to the ASIC website this Class Order was repealed in September 2015 pursuant to ASIC Instrument 2015/826. We have not been able to identify whether it has been replaced or withdrawn. If withdrawn, a stated objective of a number of other proposed changes in CP 239 is to remove outdated references to repealed ASX class orders.

ASIC Class Order [CO 00/2449]

48. This Class Order relates to relief for documents lodged electronically with ASX. It has recently been the subject of Consultation Paper CP236 with the objective of repealing it. In response to CP 236 Sydney Stock Exchange submitted that the principals behind the relief granted in relation to the ASX market under CO 00/2449 apply equally to the Sydney Stock Exchange market. Sydney Stock Exchange has previously applied for similar relief to that set out in CO 00/2449.
49. We support the rationale for repealing CO 00/2449 and the repeal of the class order itself. The rationale and the interpretation set out in RG107.21 will place the Sydney Stock Exchange market on equal footing to that of the ASX market. Equality of treatment of market operators for equivalent activities is essential for the evolution of competition for the provision of market services.
50. Our concern is that, whilst ASIC’s interpretation in relation to facilitating electronic offers of securities is set out in RG107.21, ASIC’s interpretation in relation to each of the provisions set out in Schedule B to CO 00/2449 will not be set out in any published ASIC document. Hence it will not be possible to refer listed entities to a reference source for ASIC’s interpretation of these provisions. They will not be able to rely upon reference to CP 236 as it states that the proposal is only an indication of the approach ASIC may take and is not ASIC’s final policy.
51. We strongly recommended that ASIC consider setting out its policy in this regard in a Regulatory Guide, which could address a range of issues relating to lodgment of documents with licenced market operators. We are aware that there are a number of matters, including other class orders, relating to lodgment of documents with licenced market operators which



are under review by ASIC (or on which Sydney Stock Exchange has made submissions seeking regulatory equality) and an opportunity could be taken to consolidate these into a single regulatory guide.

ASIC Class Order [CO 05/642]

52. According to the ASIC website this Class Order was repealed in October 2015 pursuant to ASIC Instrument 2015/843. We have not been able to identify whether it has been replaced or withdrawn. If withdrawn, a stated objective of a number of other proposed changes in CP 239 is to remove outdated references to repealed ASX class orders.

ASIC Class Order [CO 05/644]

53. According to the ASIC website this Class Order was repealed in October 2015 pursuant to ASIC Instrument 2015/843. We have not been able to identify whether it has been replaced or withdrawn. If withdrawn, a stated objective of a number of other proposed changes in CP 239 is to remove outdated references to repealed ASX class orders.

ASIC Class Order [CO 06/441]

54. According to the ASIC website this Class Order was repealed in October 2015 pursuant to ASIC Instrument 2015/843. We have not been able to identify whether it has been replaced or withdrawn. If withdrawn, a stated objective of a number of other proposed changes in CP 239 is to remove outdated references to repealed ASX class orders.

ASIC Class Order [CO 09/425]

55. This Class Order relates to relief for share purchase plans. It is drafted to be ASX specific.
56. Sydney Stock Exchange has previously made submissions to ASIC in relation to this Class Order and the need to replace it in acknowledgement of the growth in competition for listing services.
57. Sydney Stock Exchange operates as both a listing market and a trading market. In this regard, Sydney Stock Exchange is similar to ASX.
58. It is clear government policy to promote competition for listing and trading services in the market. Sydney Stock Exchange endorses that policy position. In order for there to be effective competition for listing and trading services, the regulatory environment must provide for a level playing field between market operators. A level playing field for trading services is materially provided by way of the various ASIC Market Integrity Rules ("MIRs") which regulate the market related activities of market participants and market operators. In the context of listing services, there is no consolidated equivalent of the MIRs regulating the market related activities of listed entities and market operators. The relevant framework is provided in various ASIC Regulatory Guides and Class Orders. Many of these ASIC Regulatory Guides and Class Orders have been drafted to be specific to the ASX market. We submit that, in order for there to be effective competition for listing services, the various ASIC Regulatory Guides and Class



Orders should be drafted to be agnostic to a relevant listing market, and should instead apply equally to all listing market operators.

59. Class Order 09/425 makes specific reference to, and gives specific relief to, managed investment schemes listed on the ASX market.
60. We submit that, at the least, Class Order 09/425 should be amended to refer to either “Sydney Stock Exchange Limited or ASX Limited” or generically to “the licensed Australian market operator upon which the listed company or managed investment scheme is admitted to the Official List”.
61. In the absence of an amendment to Class Order 09/425 we submit that to further entrench an out-dated and anti-competitive class order in a new ASIC Instrument is both bad policy and bad practice.

ASIC Class Order [CO 10/321]

62. According to the ASIC website this Class Order was repealed in December 2014 and replaced with Class Order 14/1276. We have not been able to identify whether it has been replaced or withdrawn. If withdrawn, a stated objective of a number of other proposed changes in CP 239 is to remove outdated references to repealed ASX class orders.

ASIC Question C2Q2: Do you agree with our proposal to extend the scope of the relief to make it available to entities subject to individual ASIC relief from s 323 D (3)?

63. We notice that the relief akin to Class Order [CO 00/169] *Relief from exposure period: Supplementary and replacement prospectuses*, is not available to PDS offerings under the proposed consolidated class orders.

ASIC Question C3Q1: Do you agree with our proposal to remake and consolidate [CO 00/168], [CO 00/843] and [CO 02/145]? If not, why not?

64. Sydney Stock Exchange agrees with the proposal.

ASIC Question C4Q1: Do you agree with our proposal to remake [CO 00/173] and [CO 00/174]? If not, why not?

65. No comment

ASIC Question C5Q1: Do you agree with our proposal to remake [CO 00/172], including our proposal to omit the second exemption? If not, why not?



66. No comment

ASIC Question C6Q1: Do you agree with our proposal to remake [CO 00/1092]? If not, why not?

67. Sydney Stock Exchange agrees with the proposal.

ASIC Question C7Q1: Do you agree with our proposal to reissue [CO 00/190]? If not, why not?

68. Sydney Stock Exchange agrees with the proposal in principal. However, we notice that ASIC Corporations (Substituted Supplementary Disclosure Documents) Instrument 2015 proposedly introduces a new concept of “Substituted Supplementary Document) which has the same meaning as New Supplementary Document in the sunseting class order. We conclude, in the context of ASIC Corporations (Substituted Supplementary Disclosure Documents) Instrument 2015/XX, it is more reader friendly to use “new supplementary document” instead of “Substituted Supplementary Document”.

69. Additionally, the proposed drafting section 719(b)(4)(b) seems to be missing the wording to exclude the substituted supplementary document which only corrects deficiencies in or updates that information or provides additional information from the operation of the clause (the exclusion is present in proposed section 719(b)(a)(d)) The consequence would be the substantive information contained in the previous supplementary documents will not be considered in relation to the events occurred after the lodgment of the substituted supplementary document.

70. We also note that the Instrument is titled “Substituted Supplementary Disclosure Documents” and the declaration in Part 2 is titled “Substituted Supplementary Disclosure Documents” yet the defined term is “Substituted Supplementary Document”. Subject to our submission above in relation to the term, consistency of terminology would aid usability.

ASIC Question C8Q1: Do you agree with our proposal to consolidate and reissue the relief in each of [CO 00/175], [CO 00/176], [CO 00/656], [CO 02/138] and [CO 02/143]? If not, why not?

71. Sydney Stock Exchange agrees with the proposal.

ASIC Question C8Q2: Do you agree that we should expand this relief to apply to financial producted listed on any prescribed financial market?

72. Sydney Stock Exchange agrees with the proposal.

73. It is clear government policy to promote competition for listing and trading services in the market. Sydney Stock Exchange endorses that policy position. In order for there to be effective competition for listing and trading services, the regulatory environment must provide for a



level playing field between market operators. We agree that, in order for there to be effective competition for listing services, the various ASIC Regulatory Guides and Class Orders should be drafted to be agnostic to a relevant listing market, and should instead apply equally to all listing market operators.

74. We support the new ASIC Instrument referring to “prescribed market operators” and financial markets generally. This will remove a key impediment to competition.

ASIC Question C8Q3: Do you have any comments on our proposal to expand the scope of s 734(7)(d) and section 734(8) to extend to electronic media?

75. One of the conditions for exemptions provided for market research in relation to intended offer of securities and intended availability of financial products is the securities are, or intended to be “quoted” or in the case of financial products, are traded or intended to be traded, on a prescribed financial market. This recognises the difference between the listed and quoted markets and the unlisted but traded markets (for example, the ASX AQUA market).
76. Section 7 of Part 2 of ASIC Corporations (Market research and Roadshows) Instrument only provides the exemption from Part 6D.2 and Part 6D.3 requirements whereby the securities issuer will be allowed to, under this exemption, advertise the intended offer to certain financial services licensees or their representatives in relation to a class of securities to be quoted on the prescribed financial market.
77. The proposed ASIC Instrument is redrafted on the set of class orders which support the policy objective of equal treatment for securities and financial products. The rest of the exemptions provided in the proposed ASIC Corporations (Market Research and Roadshows) Instruments 2015/XX have been equally extended to both securities and financial products.
78. Therefore, we recommend the analogous clause to section 7 should be introduced to give exemption effect to financial products that are intended to be traded on a prescribed financial market.

ASIC Question C9Q1: Do you agree with our proposal to remake [CO 04/671]? If not, why not?

79. Sydney Stock Exchange agrees with the proposal in principal.
80. However, we have significant concerns with the proposed drafting of ASIC Corporations (Sale Offers That Do Not Need Disclosure) Instrument 2015/XX. This primarily relates to the definition of “exempt category”.

Reliance on ASIC Class Order [CO 09/425]

81. Category 1 of the exempt categories relates to relief for share purchase plans. It extends the existing Class Order CO 09/425 or similar Class Orders.



82. As set out above, Class Order CO 09/425 is drafted to be ASX specific.
83. Sydney Stock Exchange has previously made submissions to ASIC in relation to this Class Order and the need to replace it in acknowledgement of the growth in competition for listing services.
84. Sydney Stock Exchange operates as both a listing market and a trading market. In this regard, Sydney Stock Exchange is similar to ASX.
85. It is clear government policy to promote competition for listing and trading services in the market. Sydney Stock Exchange endorses that policy position. In order for there to be effective competition for listing and trading services, the regulatory environment must provide for a level playing field between market operators. A level playing field for trading services is materially provided by way of the various ASIC Market Integrity Rules (“MIRs”) which regulate the market related activities of market participants and market operators. In the context of listing services, there is no consolidated equivalent of the MIRs regulating the market related activities of listed entities and market operators. The relevant framework is provided in various ASIC Regulatory Guides and Class Orders. Many of these ASIC Regulatory Guides and Class Orders have been drafted to be specific to the ASX market. We submit that, in order for there to be effective competition for listing services, the various ASIC Regulatory Guides and Class Orders should be drafted to be agnostic to a relevant listing market, and should instead apply equally to all listing market operators.
86. Class Order 09/425 makes specific reference to, and gives specific relief to, managed investment schemes listed on the ASX market.
87. We submit that, at the least, Class Order 09/425 should be amended to refer to either “Sydney Stock Exchange Limited or ASX Limited” or generically to “the licensed Australian market operator upon which the listed company or managed investment scheme is admitted to the Official List”.
88. By contrast to the proposed position in relation to the ASX-centric Class Order 09/425, we note that the exemption in relation to Stapled Securities in proposed ASIC Corporations (Sale Offers That Do Not Need Disclosure) Instrument 2015/XX is correctly much broader as it applies to stapled securities traded on prescribed markets.
89. In the absence of an amendment to Class Order 09/425 we submit that to further entrench an out-dated and anti-competitive class order in a new ASIC Instrument is both bad policy and bad practice.

Reliance on ASIC Class Order [CO 07/9]

90. Category 4 of the exempt categories relates to compromises and arrangements. It relies upon Class Order CO 07/9. According to the ASIC website, Class Order CO 07/9 was repealed in August 2015. The Note to RG 173.88 suggests that reliance for relief upon CO 07/9 only applies



if an offer is made on or before 1 September 2015. Accordingly, we submit that Category 4 paragraph (b) should read to the effect of “superseded ASIC Class Order SCO 07/9 for an offer made on or prior to 1 September 2015”.

Reliance on ASIC Class Order [CO 09/68]

91. Category 6 of the exempt categories relates to compromises and arrangements. It relies upon Class Order CO 09/68. According to the ASIC website, Class Order CO 09/68 was repealed in August 2015. The Note to RG 173.88 suggests that reliance for relief upon CO 09/68 only applies if an offer is made on or before 1 September 2015. Accordingly, we submit that Category 6 paragraph (b) should read to the effect of “superseded ASIC Class Order SCO 09/68 for an offer made on or prior to 1 September 2015”.

ASIC Question C10Q1: Do you agree with our proposal to remake [CO 08/25]? If not, why not?

92. Sydney Stock Exchange agrees with the proposal.

ASIC Question C11Q1: Do you agree with our proposal to remake [CO 10/322]? If not, why not?

93. Sydney Stock Exchange agrees with the proposal

ASIC Question C12Q1: Do you agree with our proposal to continue our relief and remake [CO 00/195]?

94. Sydney Stock Exchange agrees with the proposal

ASIC Question C12Q2: Do you agree with our proposal to clarify that the issuer of the convertible must be the same as the issuer of the underlying securities?

95. Sydney Stock Exchange agrees with the proposal

ASIC Question C12Q3:

96. No comment

ASIC Question C12Q4:

97. No comment

ASIC Question C12Q5:

98. No comment

ASIC Question C12Q6:

99. No comment

ASIC Question C13Q1: Do you agree with our proposal to remake [CO 08/35]? If not, why not?

100. Sydney Stock Exchange agrees with the proposal.

ASIC Question C13Q2: Do you agree with our proposal to extend the relief to rights issues conducted using a PAITREO structure?



101. Sydney Stock Exchange agrees with the proposal

ASIC Proposal D1: ASIC proposes to repeal [CO 00/167], which would otherwise sunset on 1 April 2017.

102. No comment

ASIC Proposal D2: ASIC propose to repeal [CO 00/177].

103. No comment

ASIC Proposal D3: ASIC proposes to repeal [CO 00/222]

104. No comment

ASIC Proposal D4: ASIC proposes to repeal [CO 00/229]

105. No comment

ASIC Proposal D5: ASIC proposes to repeal [CO 00/238]

106. No comment

ASIC Proposal E1Q1: Do you have any general comments on our proposed consolidation of seven current regulatory guides into draft RG 000?

107. Sydney Stock Exchange notes the numerous references to the specific circumstances of the ASX market in the proposed RG 000 "Offering securities under a disclosure document".

108. Sydney Stock Exchange operates as both a listing market and a trading market. In this regard, Sydney Stock Exchange is similar to ASX.

109. It is clear government policy to promote competition for listing and trading services in the market. Sydney Stock Exchange endorses that policy position. In order for there to be effective competition for listing and trading services, the regulatory environment must provide for a level playing field between market operators. A level playing field for trading services is materially provided by way of the various ASIC Market Integrity Rules ("MIRs") which regulate the market related activities of market participants and market operators. In the context of listing services, there is no consolidated equivalent of the MIRs regulating the market related activities of listed entities and market operators. The relevant framework is provided in various ASIC Regulatory Guides and Class Orders. Many of these ASIC Regulatory Guides and Class Orders have been drafted to be specific to the ASX market. We submit that, in order for there to be effective competition for listing services, the various ASIC Regulatory Guides and Class Orders should be drafted to be agnostic to a relevant listing market, and should instead apply equally to all listing market operators. We do not believe that ASIC would draft a Regulatory Guide referring to a specific listed or unlisted company, so we question why ASIC would draft a Regulatory Guide referring to a specific prescribed financial market unless the circumstances were unique to that prescribed financial market.



110. The continued reference to ASX in ASIC documentation serves to reinforce market perception that ASX is the only listing venue in Australia. Each reference in itself is an issue, but the totality of references solely to ASX reinforces the entrenched market perception. Sydney Stock Exchange has invested considerable time and effort in breaking down this perception and changing the linguistics of listing in Australia.

111. In this regard, we make the following submissions:

- RG 000.62: This paragraph gives an example referring to securities quoted on ASX and subject to a suspension. The Sydney Stock Exchange Listing Rules similarly set out that each listee must comply with all Rules applicable to it, even if quotation of the listee's securities is deferred, suspended or subject to a trading halt and that the listed securities includes securities subject of a suspension. We object to the use of an ASX-specific example and believe it is to the detriment of Sydney Stock Exchange for the reasons set out above. We submit that the example should be either deleted or, if required, re-phrased to the following effect:

“For example, companies listed on a prescribed financial market that have had continuously quoted securities suspended may still use transaction-specific disclosure subject to the considerations set out in this guide if the listing rules continue to apply during the period of suspension.”

- RG 000.93: This paragraph gives an example referring to ASX as a prescribed financial market. We object to the use of an ASX-specific example and believe it is to the detriment of Sydney Stock Exchange for the reasons set out above. We note that examples of a prescribed financial market are not given elsewhere throughout the draft Regulatory Guide. We submit that the example should either be deleted on the basis that prescribed financial market is a defined term, therefore not requiring an example, or it should be expanded to refer to all prescribed financial markets.
- RG 000.172: This paragraph refers specifically to ASX Listing Rule 2.4. We object to the direct reference to ASX and believe it is to the detriment of Sydney Stock Exchange for the reasons set out above. We submit that the drafting of this paragraph is more unfair than the drafting of similar references to ASX as is it not provided as an example, but can be read as if ASX were the only listing venue in Australia. At this point in time the Sydney Stock Exchange listing rules similarly require that there is no automatic right of quotation for securities, even if those securities are of a class that is already quoted. Hence, the relief referred to in

ASIC Corporations (Exposure Period) Instrument 2015/XX would apply equally to the Sydney Stock Exchange market. We submit that the paragraph should be amended to the following effect:

“Without this relief, a disclosure document lodged by an issuer listed on a prescribed financial market — where the offer is for securities in a class already quoted — would be subject to an exposure period if there is no automatic right of quotation for securities, even if those securities are of a class that is already quoted, so the securities would be regarded as non-quoted for the purposes of s727(3) at the time of the offer.”



- RG 000.220: This paragraph includes a note which refers specifically to ASX. The Sydney Stock Exchange listing rules Chapter 5 similarly provide for the timing of official quotation. We object to the use of an ASX-specific note and believe it is to the detriment of Sydney Stock Exchange for the reasons set out above. We submit that the note should be deleted, expanded to refer to Chapter 5 of the Sydney Stock Exchange listing rules, or amended to the following effect:

“Note: For example, the Listing Rules of a prescribed financial market may include rules that provide for the timing that securities are admitted to quotation.”

- RG 000.227: This paragraph cites a Takeover Panel comment in relation to the ASX. Whilst we acknowledge that it is appropriate that the Takeover Panel comment be cited verbatim, we submit that the citation is not necessary. We object to the use of an ASX-specific citation which espouses the value of an ASX listing and believe it is to the detriment of Sydney Stock Exchange for the reasons set out above. We submit that the paragraph could be redrafted, consistent with a number of other paragraphs, to the following effect:

“A listing provides Australian investors with a familiar, convenient and, usually, liquid market for their securities. It also attracts the market operator’s disclosure rules and supervision of the listed entity. It would be reasonable to expect that the loss of those attributes of a listing would have a material effect on the price or value of the securities: *In the matter of Pinnacle VRB Ltd (No. 9b)* [2001] ATP 26 (at [42])”.

- Key terms: As a consequence of the references to ASX set out above, the key terms section defines the term “ASX”. We object to the use of ASX as a defined term and believe it is to the detriment of Sydney Stock Exchange for the reasons set out above. We submit that the inclusion of ASX as a defined term is made even more unfair as it is not provided as an example, but can be read as if ASX were the only listing venue in Australia. We submit that, if the changes recommended above, the defined term “ASX” can be deleted and replaced with the defined term “prescribed financial market” to mean “As defined in s9 of the Corporations Act”.

ASIC Question E2Q1: Do you have any comments on our updated guidance on minimum subscription and quotation conditions in draft RG 000?

112. The guidance in proposed RG 000 “Offering securities under a disclosure document” relating to the minimum subscription and quotation conditions is of considerable interest to Sydney Stock Exchange given that it directly interacts with the listing and quotation processes of Sydney Stock Exchange.
113. We note that that RG 000.211 refers to the potential for securities to be quoted on a financial market in Australia or elsewhere. However, it appears that Section I variously refers to “financial market” and “prescribed financial market” (see, for example, RG 000.219 which refers to “when the financial market” and RG 000.220 which refers to “is because the



prescribed financial market”). We suggest that, for clarity, the use of the relevant terminology be consistently applied.

114. If the submissions in response to B1Q3 above are accepted, RG 000.253 and RG 000.254 would require amendment accordingly.

115. RG 000.249. We submit that it would be appropriate to insert a note into RG 000.249 to the following effect:

“A period of one month after the date of the refresh document is calculated to end at midnight on the corresponding day in the month after the date of the refresh document. For example, if the refresh document is dated 15 January, the one-month period ends at midnight on 15 February: see RG 7.10.

Note: However, if the last day for a period is a Saturday, Sunday, public holiday or bank holiday in the place of lodgment, the period ends on the first day following that is not a Saturday, Sunday, public holiday or bank holiday in that place: see s36(2) of the Acts Interpretation Act and RG 7.15.”

116. Additionally, Table 8 on page 53 sets out consequences for issuers and applicants in certain common situations whereby supplementary and replacement disclosure documents are lodged. The Table uses the terminology of “supplementary or replacement disclosure document” and “refresh document” interchangeably. This creates confusion as the objective to introduce the concept of “refreshment document” is to distinguish it from supplementary and replacement disclosure documentation. Also, the proposed ASIC Corporations (Minimum Subscription and Quotations) Instrument 2015/XX clearly sets out the difference between these two terminologies in relation to the specific circumstances when they are used and consequences of using these two types of disclosure documents. The same issue is identified in RG 000.197 where it says “a supplementary or replacement disclosure document must also be used to “refresh” the time periods within which to comply with a minimum subscription or quotation condition.

117. Lastly, it seems that the refresh disclosure document regime has not been extended to PDS offering.

ASIC Question E2Q2: Is the guidance that we have given on what happens if the minimum subscription condition and/or quotation condition are not satisfied adequate and useful? If not, please explain.

118. If our submission in relation to this topic is acceptable, then the relevant parts in the proposed RG 000 need to be revised.

ASIC Question E3Q1: Should an issuer be permitted to issue quoted shares and non-quoted free attaching options under a disclosure document that states or implies that both shares and attaching options will be quoted?



119. Sydney Stock Exchange does not disagree with the proposition that a reasonable investor would consider the offers of shares and free attaching options as a bundle or package and would have made an investment decision on that basis.
120. Sydney Stock Exchange strongly recommends that an issuer not be permitted to issue quoted shares and non-quoted free attaching options under a disclosure document that states or implies that both shares and attaching options will be quoted. Sydney Stock Exchange believes such a statement would be misleading.
121. We can accept that an issuer should be permitted to issue quoted shares and non-quoted free attaching options under a disclosure document that states or implies that the shares will be quoted but the attaching options will not be quoted. However, if the shares are subject to a minimum subscription and/or quotation condition then the non-quoted free attaching options must be subject to the identical conditions (that is, for example, if the shares do not satisfy the quotation condition then neither the shares nor the options must be issued).

ASIC Question E3Q2: Do you agree that an issuer should deal with applications for shares and attaching options offered under a disclosure document in the same way, if the quotation condition applies to both?

122. Again, Sydney Stock Exchange agrees with the proposition that a reasonable investor would consider the offers of shares and free attaching options as a bundle or package and would have made an investment decision on that basis.
123. Sydney Stock Exchange strongly recommends that an issuer should be required to deal with applications for shares and attaching options offered under a disclosure document in the same way, if the quotation condition applies to both. Sydney Stock Exchange, as the listing market operator, does not accept that if one class of security is approved for quotation and the other class is not, that the 2 classes can be treated separately.
124. Further, in the (unlikely) scenario of the shares not satisfying a quotation condition but the attaching options satisfying a quotation condition, it is unlikely that Sydney Stock Exchange would agree that the options are the main class of security and hence they would not satisfy Sydney Stock Exchange listing rule 5.2.

ASIC Question E4Q1: Do you consider that we should extend an exposure period for a period of less than 7 days? And if so, given the underlying policy of the exposure period, why?

125. No comment

ASIC Question E5Q1: Do you agree with our proposal to make it clear that, once we have extended an exposure period, we will not subsequently revoke that extension?

126. No comment

ASIC Question E5Q2: Do you consider that we should adopt a policy where, in certain circumstances, we revoke an extended exposure period? And if so, in what circumstances should we do so?



127. No comment

ASIC Question E6Q1: Do you have any comments on our proposed guidance on withdrawing an offer under a disclosure document, set out at draft RG 000.131?

128. Proposed RG 000.132 sets out certain statements that must be included in a supplementary or replacement disclosure document for the purpose of withdrawing an offer. Sydney Stock Exchange submits that, if an earlier disclosure document contained a statement to the effect that quotation was to be sought for any securities referred to in the disclosure document, the supplementary or replacement disclosure document for the purpose of withdrawing the offer must include a statement that the effect that any application for quotation will be withdrawn.

129. We also submit that the supplementary or replacement disclosure document for the purpose of withdrawing an offer should include a statement setting out how and by when any application monies will be refunded.

ASIC Question E7Q1: Do you have any general comments on our proposed guidance on the use of a transaction-specific prospectus when offering certain convertible securities as set out in Section C of draft RG 000?

130. No comment

ASIC Question E7Q2: Is there any element of the class of securities for which relief is given that is unclear or would benefit from additional or more detailed guidance?

131. No comment

ASIC Question F1Q1: Do you have any comments on our draft update to RG 173?

132. In relation to proposed RG 173 “Disclosure for on-sale of securities and other financial instruments” we submit as follows:

- RG 173.28: RG 173.28 sets out that the option of providing a cleansing notice is often unattractive because “a cleansing notice would otherwise fall within an exception to ASX Listing Rule 3.1”. We object to the use of an ASX-specific reference and believe it is to the detriment of Sydney Stock Exchange for the reasons set out above. The Sydney Stock Exchange Listing Rules facilitate the listing of convertible notes in the same way as the ASX Listing Rules facilitate the listing of convertible notes. The Sydney Stock Exchange Listing Rule equivalent of ASX Listing Rule 3.1 is Sydney Stock Exchange Listing Rule 11.1. The 2 sets of rules are identical. The relief provided in draft ASIC Corporations (On-sales of Convertible Notes Instrument 2015/XX provides relief for quoted securities on the Sydney Stock Exchange market in the same way as it provides relief for quoted securities on the ASX market. We therefore submit that RG 173.28(c) should be redrafted to the following effect:

“a cleansing notice would otherwise fall within an exception to ASX Listing Rule 3.1 or Sydney Stock Exchange Listing Rule 13.1”.



- RG 173.30: RG 173.30 similarly refers exclusively to ASX Listing Rule 3.1. We similarly submit that RG 173.30(b) should be redrafted to not be ASX-centric.
- RG 173.52: RG 173.52 sets out that one of the factors ASIC will take into account is the reason for a suspension, including whether it is as a result of a failure to comply with the ASX Listing Rules. We object to the use of an ASX-specific reference and believe it is to the detriment of Sydney Stock Exchange for the reasons set out above. The relief to increase the maximum five day suspension period should apply equally to all prescribed financial markets. We therefore submit that RG 173.28(c) should be redrafted to reflect that the suspension may be for failure to comply with the listing rules of a prescribed financial market. This would be consistent with the drafting approach in RG 189.68 where the term “ASX” is replaced by “listing rules of the relevant market operator” in a similar context.
- RG 173.73: RG 173.73 relates to Category 1 relief. RG 173.73 states that ASIC has provided relief from the on-sale provisions under Class Order C) 09/425. As noted in response to Question C9Q1, Class Order 09/425 makes specific reference to, and gives specific relief to, managed investment schemes listed on the ASX market. Accordingly, the current drafting of RG 173.73 (and similarly RG 173.74 and RG 173.75) does not reflect the nature of the relief in a competitive market environment. As submitted in Question C9Q1, we submit that, at the least, Class Order 09/425 should be amended to refer to either “Sydney Stock Exchange Limited or ASX Limited” or generically to “the licensed Australian market operator upon which the listed company or managed investment scheme is admitted to the Official List”. In respect of RG 173.73 to RG 173.75, we submit that either:
 - if Class Order 09/425 is not amended as submitted above, RG 173.73 to RG 173.75 should be amended to reflect that the relief applies solely to the ASX market and that listed entities on other prescribed financial markets must apply for relief on a case by case basis; or
 - if Class Order 09/425 is amended as submitted above, no change to RG 173.73 to RG 173.75 is required.
- Key terms: As a consequence of the references to ASX set out above, the key terms section defines the term “ASX”. We object to the use of ASX as a defined term and believe it is to the detriment of Sydney Stock Exchange for the reasons set out above. We submit that the inclusion of ASX as a defined term is made even more unfair as it is not provided as an example, but can be read as if ASX were the only listing venue in Australia. We submit that, if the changes recommended above, the defined term “ASX” can be deleted and replaced with the defined term “prescribed financial market” to mean “As defined in s9 of the Corporations Act”.

ASIC Question F2Q1: Do you have any comments on our proposal to revoke RG 213?

133. No comment



ASIC Question F3Q1: Do you have any comments on our draft updates to these four existing regulatory guides?

134. Regulatory Guide 55 Statements in disclosure documents and PDSs: Consent to quote

- RG 55.62 to RG 55.64: RG 55.62 to RG 55.64 relate to relief for geologists reports. In this regard, we believe that these paragraphs require redrafting to reflect the submissions made above in response to Question C1Q1. That is, that the drafting not be ASX specific for the reasons outlined; that the drafting recognise that JORC reports can be prepared by persons other than members of AusIMM or the AIG; that the scope recognise the introduction of the Sydney Stock Exchange mining rules; and that the drafting acknowledge that relief does not extend to reports in relation to oil and gas. In relation to the Note to RG 55.63 we note that the JORC Code is also incorporated in the Sydney Stock Exchange Listing Rules and that it applies when reporting the same matters to Sydney Stock Exchange.
- Key terms: As a consequence of the references to ASX set out above, the key terms section defines the term “ASX”. We object to the use of ASX as a defined term and believe it is to the detriment of Sydney Stock Exchange for the reasons set out above. We submit that the inclusion of ASX as a defined term is made even more unfair as it is not provided as an example, but can be read as if ASX were the only listing venue in Australia. We submit that, if the changes recommended above, the defined term “ASX” can be deleted and replaced with the defined term “prescribed financial market” to mean “As defined in s9 of the Corporations Act”.

135. *Regulatory Guide 66 Transaction-specific disclosure for PDSs*

- RG 66.26: RG 66.26 makes specific reference to ASX as a prescribed financial market. For the reasons outlined elsewhere in this submission we believe the example should either be deleted or expanded to be non-ASX specific. By contrast, an example is not given in RG 66.27.
- Requirement for Transaction-specific disclosure PDS is also briefly discussed in RG 000. For example, RG 000.76 states that excluded information must be disclosed in the Transaction-specific disclosure PDSs. Excluded information includes information that has not been previously disclosed to the public in accordance with the relevant listing rules of the prescribed financial market. Further, it states that disclosure of excluded information is only to the extent that an investor is reasonably required to assess, among other things, the assets, liabilities and prospects before making an investment decision.
- There are certain carve-outs from continuous disclosure requirements from the various listing rules of the prescribed financial markets in Australia. Commonly, they include incomplete transaction, management reports and information relating to a trade secret. Ordinarily, disclosure of such information is required for the investor to assess the entity’s financial position and future prospects.



- Therefore, it seems that the company will be compelled to disclose the information which is otherwise exempted from disclosure under the listing rules if they were not to conduct the offer which is subject to transaction-specific disclosure PDS.

136. *Regulatory Guide 189 Disclosure relief for rights issues*

- RG 189.38: RG 189.38 refers, in the context of a cleansing notice, to any additional “requirements imposed by the relevant market operator”. It then gives the specific example of the ASX requirement for a cleansing notice to be given before the start of trading on the day that is at least 6 six business days before the offer is made. For the reasons set out elsewhere in this submission, we believe it inappropriate to give the specific example of ASX. The Sydney Stock Exchange Listing Rules, which in many regards are required to follow the ASX requirements owing to the absence of competition in clearing and settlement, similarly require a cleansing notice to be given before the start of trading on the day that is at least 6 six business days before the offer is made. We believe the example should be either deleted or expanded to refer to the ASX and Sydney Stock Exchange Listing Rules. This would be consistent with the drafting approach in RG 189.68 where the term “ASX” is replaced by “listing rules of the relevant market operator”.
- RG 189.43: RG 189.43 similarly refers to cleansing notice requirements and makes specific reference to specific ASX Listing Rule requirements. The specific reference is not just an example, which may indicate there are a number of financial markets, but reinforces the perception that ASX is the only financial market. The Sydney Stock Exchange Listing Rules similarly require a cleansing notice to be given before the start of trading on the day that is at least 6 six business days before the offer is made. We believe the reference to ASX should be either deleted or expanded to refer to the ASX and Sydney Stock Exchange Listing Rules. This would be consistent with the drafting approach in RG 189.68 where the term “ASX” is replaced by “listing rules of the relevant market operator”.
- Key terms: As a consequence of the references to ASX set out above, the key terms section defines the term “ASX”. We object to the use of ASX as a defined term and believe it is to the detriment of Sydney Stock Exchange for the reasons set out above. We submit that the inclusion of ASX as a defined term is made even more unfair as it is not provided as an example, but can be read as if ASX were the only listing venue in Australia. We submit that, if the changes recommended above, the defined term “ASX” can be deleted and replaced with the defined term “prescribed financial market” to mean “As defined in s9 of the Corporations Act”.

137. *Regulatory Guide 228 Prospectuses: Effective disclosure for retail investors*



- RG 228.17: RG 228.17 refers to compliance with the JORC Code. We wish to raise a number of issues in this regard.

First, as referred to above Sydney Stock Exchange is, and has been for over 2 years, in the process of introducing new listing rules specific to disclosures by companies in the mining and oil & gas sectors. The Sydney Stock Exchange mining rules also require compliance with, amongst others, the JORC Code. Therefore, the Note to the paragraph is ASX centric and should, for the reasons outlined elsewhere in this submission, either be deleted or expanded to include reference to the Sydney Stock Exchange Listing Rules.

Second, the scope of the new Sydney Stock Exchange rules extends beyond the JORC Code to also include the Canadian NI 43-101 and CIM standards and the South African SAMREC standards.

Hence, as it will be the case that geological reports released to the Australian market could be prepared under the JORC Code, Canadian NI 43-101 and CIM standards and the South African SAMREC standards. Accordingly, we submit that consideration should be given to expanding the scope of the paragraph.

Third, the paragraph only relates to the mining industry. It does not extend to geological reports relating to the oil & gas sector. Geological reports relating to the oil & gas sector are required to be prepared in accordance with the SPE-PRMS code

- RG 228.33: RG 228.33(c) refers explicitly to compliance with the ASX Listing Rules. For the reasons outlined elsewhere in this submission, we submit that this reference should be either be deleted or amended to refer to compliance with the Listing Rules of a prescribed financial market.
- RG 228.109: RG 228.109 Table 10 refers to the ASX Corporate Governance Council's Corporate Governance Principles and Recommendations. We have no concern in relation to this reference to ASX as it provides appropriate guidance to the market.
- RG 228.110: RG 228.110 refers to the ASX Guidance Note 9. We have no concern in relation to this reference to ASX as it provides appropriate guidance to the market.
- RG 228.112: RG 228.112 refers to continuous disclosure announcements, as required under the Corporations Act and ASX Listing Rules. This is incorrect as the Act requires compliance with the rules of the listing market. The listing markets in Australia are ASX, Sydney Stock Exchange, NSX and SIM. The current drafting is outdated and doesn't recognise the change in the market over recent years. We submit that the reference should be amended to refer to the listing rules of the listing markets.
- RG 228.113: RG 228.113 requires the same amendment as RG 228.112. The Note to RG 228.113 refers to the ASX Corporate Governance Council's Corporate Governance



Principles and Recommendations. We have no concern in relation to this reference to ASX as it provides appropriate guidance to the market.

- RG 228.134: RG 228.134(k) requires disclosure of any waivers by ASIC or by ASX. The current drafting is outdated and doesn't recognise the change in the market over recent years. We submit that the reference should be amended to refer to the listing rules of the listing markets or prescribed financial markets.
- RG 228.155: RG 228.155 requires disclosure of any escrow arrangements imposed by ASX. The listing markets in Australia which impose may escrow arrangements are ASX, Sydney Stock Exchange and NSX. The current drafting is outdated and doesn't recognise the change in the market over recent years. We submit that the reference should be amended to refer to the listing rules of the listing markets or prescribed financial markets.
- Key terms: As a consequence of the references to ASX set out above, the key terms section defines the term "ASX". We object to the use of ASX as a defined term and believe it is to the detriment of Sydney Stock Exchange for the reasons set out above. We submit that the inclusion of ASX as a defined term is made even more unfair as is it not provided as an example, but can be read as if ASX were the only listing venue in Australia. We submit that, if the changes recommended above, the defined term "ASX" can be deleted and replaced with the defined term "prescribed financial market" or "listing market" to mean "As defined in s9 of the Corporations Act".