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Australian Securities and Investments Commission,
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Sydney, NSW 2000

John Price,
Commissioner,
Australian Securities and Investments Commission,
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Melbourne, Vic 3000



29 April 2016

Dear Ms Armour and Mr Price,

Removal of appeal rights for decisions under ASX Listing Rules

The Corporations Committee of the Business Law Section of the Law Council of Australia (the **Committee**) wishes to record its concern that the rules providing a right of appeal to the ASX Appeal Tribunal in respect of decisions made by ASX under the ASX Listing Rules were removed with effect from 24 December 2015 without any prior notice.

For your information, we enclose a copy of a letter we have sent to ASX expressing our concerns about this change and the lack of prior consultation.

The Committee was grateful for the opportunity to meet with you earlier this month to discuss these issues and understands ASIC supported ASX's decision to remove appeal rights under the Listing Rules. Nevertheless, the Committee remains concerned about both issues and wishes to record its position.

Appeal rights

In our view the removal of appeal rights in respect of these decisions has inappropriately removed important protections for people whose interests may be adversely affected¹ and, as a consequence, we believe the change was not compatible with the principle that the Listing Rules be administered in a fair and transparent manner.²

The Committee acknowledges ASIC and ASX are currently concerned about emerging risks that could potentially have an adverse effect on the integrity of ASX's market. In the Committee's view, it is clearly desirable ASIC and ASX should seek to identify risks of this

¹ While ASX has duties as a market licensee that may be relevant to these decisions, including a general obligation "to the extent that it is reasonably practicable to do so, to do all things necessary to ensure that the market is a fair orderly and transparent market", the Committee does not consider this any substitute for a review process that provides for individual decisions to be subject to appropriate review. Likewise, we do not believe judicial review is an adequate substitute for review by a body such as the ASX Appeal Tribunal.

² In ASIC's most recent Market assessment report: ASX Group, ASIC identified this as a core principle guiding its assessment whether ASX is complying with its obligations as a market licensee – see paragraph 11 of REP 401.

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nature and adopt appropriate counter-measures. However, even accepting your view that ASX should be responsible for its Official List, the Committee does not consider the removal of appeal rights in respect of decisions by ASX under the ASX Listing Rules was an appropriate response.

Public consultation

While we understand it will primarily be a matter for ASX to decide whether to reinstate appeal rights under the Listing Rules, the Committee submits ASIC has a very important role in ensuring material changes to ASX's operating rules are subject to an appropriate consultation process, which should be formalised. Even when it is considered that a rule change will not be controversial, there are advantages to consulting, including identifying aspects of the proposal that have not otherwise been considered. You acknowledged this in our discussion.

The Committee believes there should always be an opportunity for market participants to comment on proposed changes to rights or obligations under a market's operating rules before they take effect unless there is a compelling reason to the contrary. While a public consultation process is not expressly mandated by legislation, the Committee believes it is something that ASIC should take into account in reviewing proposed changes to the operating rules of a licensed market under Division 3 of Part 7.2 of the Corporations Act. To this end, the Committee recommends ASIC update RG 172.153 to make it clear that the nature and extent of the public consultation process undertaken in relation to the formulation of a proposed rule change is a matter ASIC will consider when reviewing amendments to a market's operating rules.

While the Committee appreciates changes to ASX Guidance Notes are not formally regulated by the Corporations Act, the Committee also believes it is appropriate that material changes to ASX guidance be subject to similar consultation processes. For this reason, our letter to ASX has requested ASX undertake a public consultation in relation to the Guidance Notes it proposes to issue in respect of its new admissions framework (as set out in Compliance Update 4/16). We should be grateful if ASIC supported this request in any discussions it may have with ASX on this topic.

The Committee would be pleased to further discuss this submission if that is helpful. In the first instance, please contact the Committee Deputy Chair, Wendy Rae, on (03) 9613 8595, if you would like to do so.

Yours sincerely,



Teresa Dyson, Chair
Business Law Section

Cc Kevin Lewis, Group Executive and Chief Compliance Officer, ASX Limited

