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PROPOSED CHANGES TO ASX LISTING RULE SHAREHOLDER APPROVAL REQUIREMENTS ON CHANGES TO ASX LISTING STATUS

- 1 Thank you for providing us with an opportunity to comment on ASX's proposed changes to shareholder approval requirements for changes to admission status.
- 2 We are commenting only on the first proposed change, "Shareholder approval for a dual listed company to change to ASX Foreign Exempt Listing Status", with regard to companies whose primary foreign exchange is the NZX Main Board operated by NZX Limited (**NZX**).
- 3 In summary, with regard to our extensive experience, Chapman Tripp is concerned with the proposed change for companies whose primary foreign exchange is the NZX. We recommend the addition of an exception for such companies.
- 4 We set out our reasoning below in response to the consultation paper.

ASX and NZX listing rules are substantively similar

- 5 Shareholders of dual listed companies are unlikely to be significantly affected by a change in admission status from dual listed to foreign exempt listed where their primary foreign exchange is the NZX. The similarities in listing rules and corporate governance principles and recommendations mean that any material differences to listing rules and corporate governance arrangements following a change in admission status are minimised due to the requirement to comply with the NZX Listing Rules.¹
- 6 As stated at Footnote 18 of the Consultation Paper, exchanges where security holders are likely to be affected by a change in admission category are "an exchange with rules that are quite different in detail from those of ASX, including a second board of an exchange in a developed market, or an exchange in an emerging or developing market". The NZX does not fit this characterisation. To impose the regulatory burden of seeking shareholder approval for an admission status change on all entities as a blanket rule creates unnecessary consequences for entities whose security holders were unlikely to be affected by the change. As noted at Point 3.3 of the Consultation Paper, security holders who are still unhappy with the change

¹ ASX Listing Rule 1.11, Condition 2.



would be free to sell their shares on both the ASX and NZX irrespective of either admission status.

ASIC, FMA and NZX collaborate under MOU/MABRA

- 7 The Australian Securities and Investments Commission (**ASIC**) and the Financial Markets Authority (**FMA**), the primary statutory market conduct regulators in the Australian and New Zealand jurisdictions, respectively, collaborate under a Memorandum of Understanding on trans-Tasman enforcement and matters of mutual interest. In our experience, the approaches are largely consistent between the two regulators.
- 8 In addition, NZX has certified as a foreign regulator in Australia under the Mutual Assistance in Business Regulation Act (**MABRA**), which enables NZX to directly request ASIC to gather information, documents or evidence on NZX's behalf and to disclose that information to NZX.
- 9 Due to the similarity in regimes, there is a mutual recognition of enforcement between Australia and New Zealand. Should an NZX/ASX dual listed issuer switch to an ASX foreign exempt listing, the shift in an entity's primary market regulator from ASIC, FMA, ASX and NZX, to primarily FMA and NZX, should not have any significant impact on the standards and penalties for non-compliance the issuer would be subject to.

Concluding comments

- 10 Of the over 50 entities dual-listed on the ASX and NZX we are aware of only two who currently have foreign exempt listed status.² Creating an exception for NZX listed companies within the proposed change will not significantly affect the policy on the whole. The addition of an exception would ensure continued mutual recognition of similar standards between New Zealand and Australia's markets preventing unnecessary regulatory burden on affected companies and their security holders.
- 11 We are happy to discuss our comments further if required.

Yours sincerely,

Roger Wallis / James Houlston

Partner / Summer Clerk

² EBOS Group Limited and A2 Milk Company Limited.