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Ms Diane Lewis
Senior Manager, Regulatory & Public Policy
ASX Limited
20 Bridge Street
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By email regulatorypolicy@asx.com.au

Dear Ms Lewis

ASX Consultation Paper: Facilitating Dual Listings by New Zealand Companies

1. General comments

Gadens applauds ASX's consultation paper entitled "Facilitating Dual Listings by New Zealand Companies" (**Consultation Paper**) and the suggestion that the rules around "Foreign Exempt Listings" be relaxed for New Zealand companies listed on the NZX Main Board.

Based on ASX's own data it appears that only two foreign companies are currently utilising the "Foreign Exempt Listing" with the majority of foreign companies electing for a full ASX listing. In our view this highlights that the current "Foreign Exempt Listing" criteria may be too high on the basis that it only allows very large entities to take advantage of it when entities of such a size have ample resources to comply with a full listing in any event.

We believe that the proposal has the ability to attract a number of mid-cap NZX Main Board listed entities in search of a deeper and more liquid equity capital market. However we do suggest that ASX explore whether either:

- (a) The "Foreign Exempt Listing" thresholds ought to be lowered; or
- (b) Other exemptions be provided for entities listed on foreign exchanges with a comparable market disclosure regime.

2. Foreign Exempt Listing thresholds

At present, in order to obtain an "ASX Foreign Exempt Listing" a foreign listed company is required to have:

- (a) An operating profit for each of the last 3 financial years of at least A\$200 million; or
- (b) Net tangible assets of at least A\$2 billion,

as well as at least 1,000 shareholders.

The impact of these thresholds is that only the largest foreign entities are able to list as "Foreign Exempt Listings". This excludes higher growth entities that may otherwise be

listed on other respectable foreign exchanges with robust comparable continuous and periodic disclosure regimes.

At present none of the 32 NZX Main Board / ASX listed entities have a "Foreign Exempt Listing" and only 2 foreign companies generally have a "Foreign Exempt Listing" namely, Alcoa Inc. (**ASX:AAI**) and AngloGold Ashanti Limited (**ASX:AGG**).

In the Consultation Paper ASX admits that the thresholds are "very high". In our view having such a high threshold has the direct impact that only companies who are relatively indifferent to their listing costs are eligible to apply for a reduced regulatory burden. While we understand the rationale in ensuring that "Foreign Exempt Listings" are of a high quality we believe this outcome could still be achieved with significantly lower thresholds.

We urge ASX to consider lowering the "Foreign Exempt Listings" thresholds to a level that better strikes the balance between investor protection and investor choice.

3. Why just New Zealand?

The impetus for the change as set out in the Consultation Paper is the Australia-New Zealand Closer Economic Relations Trade Agreement (**ANZCERTA**) which broadly speaking recognises the high level of cooperation and mutual recognition in corporate and securities regulation between the two countries.

While the ANZCERTA and the mutual recognition regimes in both Australia and New Zealand are certainly indicative of not dissimilar corporate and securities regimes we are of the view that the test should be more targeted. In our view the primary considerations should be whether:

- (a) the foreign prospectus disclosure regime (specifically) is sufficiently similar to Chapter 6D and Part 7.9 of the Corporations Act; and
- (b) the foreign listing rules have a comparable regime in terms of continuous and periodic disclosure.

The level of enforcement and quality of market practice will also be relevant in this regard. Nevertheless we stress the expansive operation of the *Corporations Act 2001* (Cth) (ie to offers in the jurisdiction regardless of the location of the issuer) offers investors and the Australian Securities and Investments Commission remedies against a foreign issuer in the event of any misconduct by that issuer.

We urge ASX to consider extending exemptions to other jurisdictions beyond just the NZX Main Board including the Singapore Exchange, Hong Kong Stock Exchange, London Stock Exchange as well as the New York Stock Exchange and NASDAQ.

4. Conclusion

We are of the view that the current thresholds for a "Foreign Exempt Listing" are too high on the basis that they are currently severely under-utilised. Further the "Foreign Exempt Listing" offers regulatory relief only to very large listed entities which may not need or be indifferent to the availability of such relief.

ASX should also consider providing exemptions to the "Foreign Exempt Listing" to other comparable jurisdictions. While this would take a certain amount of work the benefits to Australian investors would be high, exposing them to a greater range of high growth listed entities including in the tech and IT sector.

Yours sincerely



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