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Dear Ms Gausson

### **New Rules and Timetables for Common Forms of Capital Raisings**

The Australian Financial Markets Association (AFMA) welcomes the opportunity to comment on the ASX Consultation Paper and Exposure Draft on “Listing Rule Amendments – new rules and timetable for common forms of capital raisings” (Consultation Paper).

In general, AFMA welcomes the proposals set out in the Consultation Paper and agrees with the objectives of the proposed changes to systematise timetables instead of relying solely on the current case-by-case waivers, while providing a measure of flexibility. AFMA supports an all encompassing approach to relief in relation to accelerated transactions. Our comments are directed to practical concerns with the proposed timetables and drafting matters directed at ensuring harmony with ASIC Class Order 08/35.

#### **1. Timetable Comments**

##### **1.1. Scope for flexibility**

While systematised timetables bring welcome benefits there is also a desire to retain scope for flexibility. The proposed timetables contain some flexibility to enable the tailoring of the timetable to an issuer’s needs which is acknowledged. Although this is desirable there should still be a mechanism for an institution to work outside of the timetables if need be (i.e. by obtaining a waiver from the ASX) to maintain greater flexibility when it is necessary for issuers.

## **1.2. Largest 20 holders disclosure requirement**

In relation to each type of accelerated entitlement offer timetable set out in the Consultation Paper, on the day prior to quotation of securities issued under the retail offer, the ASX has introduced a requirement to provide it with a statement setting out the names of the 20 largest holders of the particular class of security and the percentage held by each such holder.

Given the substantial holding requirements that apply to all substantial holders under the *Corporations Act 2001*, we are of the view that this additional disclosure is unnecessary.

## **1.3. Renounceable transaction retail settlement**

For Renounceable Accelerated Entitlement Offers the proposed timetable provides that the retail shortfall bookbuild and issue of securities to retail holders are to occur not later than 5 business days after the close of the retail offer, with quotation commencing on the following day.

Compliance with this proposed timetable would be very difficult to achieve (especially for large registers and given the reconciliation process that needs to be undertaken at the end of the retail bookbuild process).

Having canvassed members, there should be at least 3 business days between completion of the retail shortfall bookbuild and the issuance of retail offer securities (and an extra day built into the timetable to permit for quotation).

## **1.4. Price / ratio announcement timing**

In relation to Non-Renounceable Accelerated Entitlement Offers, footnote 3 provides that the issuing entity must, where it announces only an indicative issue ratio, and / or indicative issue price on "Day 0", announce the final fixed issue ratio and fixed issue price by no later than 2.00pm on the day before the trading halt is lifted and trading resumes on an ex-entitlement basis.

This timetable will be very difficult to comply with where a bookbuild is undertaken to determine price / ratio, given the reconciliation process that must be undertaken and the fact that institutions may not have elected to take up or not take up their entitlement to new securities by this time. Accordingly, this timing should be, at the earliest, 9.00am on the day the trading halt is lifted.

## **1.5. Settlement**

Although it is not expressly stated, the timetables imply that institutional settlement will occur T+3 for both Non-Renounceable Accelerated Entitlement Offers and Renounceable Accelerated Entitlement Offers, whereas settlement would usually occur on T+5 and T+7 basis (respectively).

The reason for the length of this settlement period is due to the time required to investigate and verify holdings / entitlements, finalise allocations, issue and receive documentation, and organise settlement.

Large multi-region institutions already find the accelerated timetable challenging given time zone differences and the number of sub-custodians involved.

### 1.6. Recommended revised timings

Overall, the timetables should reflect standard AREO, SAREO and ANREO timetables. Suggested changes are set out and highlighted in the respective tables below.

#### ***Non-Renounceable Accelerated Entitlement Offers Timetable***

The following revised timetable for Non-Renounceable Accelerated Entitlement Offers is proposed:

Event	Time limits	Business Day: 2 day trading halt	Business Day: 3 day trading halt
Entity requests trading halt before market open Entity announces non-renounceable accelerated entitlement issue [and lodges Offer Documentation <sup>1</sup> with the ASX] Entity applies for +quotation (Appendix 3B) Entity lodges cleansing notice with ASX (if applicable)	Prior to the commencement of trading on day 0	0	0
Entity conducts institutional offer [and shortfall bookbuild (if applicable)]	Not more than 1(2) business days after trading halt requested	1	2
Announcement of results of institutional offer Entity releases copy of prospectus to ASX (if applicable) Trading resumes on an ex-entitlement basis	Before the commencement of trading At the commencement of trading	2	3
+Record date to identify +security holders entitled to participate in the issue	Not earlier than the 3rd business day after day 0	3	3 [not 4]

<sup>1</sup> Offer Documentation may include an investor presentation, pathfinder or prospectus, as applicable.

<p>Day before quotation of securities issued under institutional offer, entity provides ASX with the following:</p> <ul style="list-style-type: none"> <li>The date of allotment and number of securities for which quotation is sought</li> <li>A statement setting out the issued capital of the entity following allotment</li> </ul> <p>Entity provides ASX updated Appendix 3B (if required)</p>	<p>Not later than 12:00pm on the day before quotation of the securities issued under institutional offer</p>	<p><b>7 [not 3]</b></p> <p><i>[On the assumption that this is a low doc issue]</i></p>	<p><b>8 [not 4]</b></p>
<p>Quotation of securities issued under institutional offer</p> <p><b>[Dispatch of holding statements to institutional investors]</b></p>	<p>Occurs same day as issue of securities under institutional offer, and not before updated Appendix 3B is provided to ASX (if required)</p>	<p><b>8 [not 4]</b></p>	<p><b>9 [not 5]</b></p>
<p>Entity sends Offer Documentation and serially numbered entitlement and acceptance forms to eligible retail holders</p> <p>Entity announces that despatch of offer documents has been completed</p> <p>Retail offer period opens</p>	<p>Not less than 1 business day after record date or more than 5 business days after record date</p>	<p><b>5 [not 4]</b></p>	<p><b>5</b></p>
<p>Retail offer close</p>	<p>Not less than 10 or more than 21 business days from despatch of offer documents</p>	<p><b>15 [not 13]</b></p>	<p><b>15 [not 14]</b></p>
<p>Announce results of retail offer</p>	<p>Not later than <b>3</b> <i>[rather than 1 as time is required to allow cheques to clear]</i> business days after the close of the retail offer</p>	<p><b>19 [not 14]</b></p>	<p><b>19 [not 14]</b></p>
<p>Day before quotation of securities issued under retail offer, entity provides ASX with the following:</p> <ul style="list-style-type: none"> <li>The date of allotment and number of securities for which quotation is sought</li> <li>A statement setting out the</li> </ul>	<p>Not later than 7 business days after the close of the retail offer</p> <p>Not later than 12:00pm day before quotation</p>	<p><b>22 [not 18]</b></p> <p><i>[2 days is required to allow for notification of sub-</i></p>	<p><b>22 [not 19]</b></p>

<p>issued capital of the entity following allotment</p> <ul style="list-style-type: none"> <li>A distribution schedule of the securities, if the issued securities form a new class of this class of security and the percentage held by each</li> </ul>		<i>underwriters]</i>	
<p>Issue of securities to retail holders no later than this day</p> <p>Entity provides ASX updated Appendix 3B (if required)</p>			
<p>Quotation of securities issued under retail offer</p>	<p>Not later than <b>8</b> <i>[is more common rather than 6]</i> business days after the close of the retail offer, and not before updated Appendix 3B is provided to ASX (if required)</p>	<b>23</b> <i>[not 19]</i>	<b>23</b> <i>[not 20]</i>
<p>Despatch of holding statements to retail holders</p>	<p>Not more than 8 business days after the close of the retail offer</p>	<b>23</b> <i>[not 21]</i>	<b>23</b> <i>[not 22]</i>

### ***Renounceable Accelerated Entitlement Offers Timetable***

The following revised timetable for Renounceable Accelerated Entitlement Offers is proposed:

<b>Event</b>	<b>Time limits</b>	<b>Business Day: 3</b> <i>[not 2]</i> <b>day trading halt</b>	<b>Business Day: 4</b> <b>day trading halt</b>
<p>Entity requests trading halt before market open</p> <p>Entity announces renounceable accelerated entitlement issue</p> <p>Entity applies for +quotation (Appendix 3B)</p> <p>Entity lodges cleansing notice with ASX (if applicable)</p>	<p>Prior to the commencement of trading on day 0</p>	<b>0</b>	<b>0</b>
<p>Entity conducts institutional offer</p>	<p>Not more than 2(4) business days after trading halt requested</p>	<b>1</b>	<b>2</b> <i>[not 3]</i>

Bookbuild for shortfall from institutional offer (if required) Announcement of results of institutional offer Entity releases copy of prospectus to ASX (if applicable) Trading resumes on an entitlement basis	Before the commencement of trading (but not more than 3(4) business days after trading halt requested)  At the commencement of trading	<b>2</b>	<b>3 [not 4]</b>
+Record date to identify +security holders entitled to participate in the issue	Not earlier than the 3 <sup>rd</sup> (4 <sup>th</sup> ) business day after day 0	<b>3</b>	<b>4 [not 5]</b>
Day before quotation of securities issued under institutional offer, entity provides ASX with the following: <ul style="list-style-type: none"> <li>The date of allotment and number of securities for which quotation is sought</li> <li>A statement setting out the issued capital of the entity following allotment</li> </ul> Entity provides ASX updated Appendix 3B (if required)	Not later than 12:00pm on the day before quotation of the securities issued under institutional offer	<b>9 [not 3]</b>	<b>10 [not 5]</b>
Quotation of securities issued under institutional offer	Occurs same day as issue of securities under institutional offer, and not before updated Appendix 3B is provided to ASX (if required)	<b>10 [not 4]</b>	<b>11 [not 6]</b>
Entity sends Offer Documentation and serially numbered entitlement and acceptance forms to eligible retail holders Entity announces that despatch of offer documents has been completed Retail offer period opens	Not less than 1 business day after record date or more than 5 business days after record date	<b>4</b>	<b>5 [not 6]</b>
Retail offer close	Not less than 10 or more than 21 business days from despatch of offer documents		<b>15</b>
Announce results of retail offer	Not later than 3	<b>17 [not 14]</b>	<b>18 [not 16]</b>

	<i>[rather than 1 as time is required to allow cheques to clear]</i> business days after the close of the retail offer		
Bookbuild for shortfall from retail offer (if required)	Not later than 5 business days after the close of the retail offer	<b>19</b> <i>[not 18]</i>	<b>20</b> <i>[not 19]</i>
Day before quotation of securities issued under retail offer, entity provides ASX with the following: <ul style="list-style-type: none"> <li>The date of allotment and number of securities for which quotation is sought</li> <li>A statement setting out the issued capital of the entity following allotment</li> <li>A distribution schedule of the securities, if the issued securities form a new class</li> </ul> Issue of securities to retail holders no later than this day Entity provides ASX updated Appendix 3B (if required)	Not later than 8 business days after the close of the retail offer  Not later than 12:00pm day before quotation	<b>23</b> <i>[not 18]</i>  <i>[2 days is required to allow for notification of sub-underwriters]</i>	<b>24</b> <i>[not 19]</i>
Quotation of securities issued under retail offer	Not later than <b>9</b> <i>[is more common rather than 6]</i> business days after the close of the retail offer, and not before updated Appendix 3B is provided to ASX (if required)	<b>24</b> <i>[not 19]</i>	<b>25</b> <i>[not 20]</i>
Despatch of holding statements to retail holders	Not more than 9 business days after the close of the retail offer	<b>24</b> <i>[not 21]</i>	<b>25</b> <i>[not 22]</i>

### ***Simultaneous Renounceable Accelerated Entitlement Offers Timetable***

The following revised timetable for Simultaneous Renounceable Accelerated Entitlement Offers is proposed:

Event	Time limits	Business Day: 2 day trading halt	Business Day: 3 [not 4] day trading halt
Entity requests trading halt before market open  Entity announces simultaneous accelerated rights issue  Entity applies for +quotation (Appendix 3B)  Entity lodges cleansing notice with ASX (if applicable)	Prior to the commencement of trading on day 0	0	0
Entity conducts institutional offer not more than 2 (3) business days after trading halt requested		1	2 [not 3]
Announcement of results of institutional offer  Entity provides ASX updated Appendix 3B (if required)  Entity releases copy of prospectus to ASX (if applicable)  Trading resumes on an ex-entitlement basis	Before commencement of trading  At commencement of trading	2	3 [not 4]
+Record date to identify +security holders entitled to participate in the issue	Not earlier than the 3rd business day after day 0	3	3 [not 5]
Entity sends Offer Documentation and serially numbered entitlement and acceptance forms to retail holders  Entity announces that despatch of offer documents has been completed  Retail offer opens	Not later than the 3 <sup>rd</sup> business day after the resumption of trading following the trading halt	5 [not 3]  <i>[On the assumption that this is a low doc issue]</i>	5
Day before quotation of securities issued under institutional offer, entity provides ASX with the following: <ul style="list-style-type: none"> <li>• The date of allotment and number of securities for which quotation is sought</li> <li>• A statement setting out the issued capital of the entity following allotment</li> </ul> Entity provides ASX updated Appendix 3B (if required)	Not later than 12:00pm on the day before quotation of the securities issued under the institutional offer	7 [not 3]	7 [not 5]

Quotation of institutional offer	Occurs same day as issue of securities under the institutional offer, and not before entity provides ASX updated Appendix 3B (if required)	<b>8</b> <i>[not 4]</i>	<b>8</b> <i>[not 6]</i>
Retail offer close	Not less than 10 or more than 21 business days from despatch of offer documents	<b>15</b> <i>[not 13]</i>	<b>15</b>
Announce results of retail offer Bookbuild for shortfall from institutional and retail offers (if required)	Not later than <b>3</b> <i>[rather than 1 as time is required to allow cheques to clear]</i> business days after the close of the retail offer	<b>19</b> <i>[not 14]</i>	<b>19</b> <i>[not 16]</i>
Bookbuild settlement	Not later than <b>8</b> <i>[is more common rather than 5]</i> business days after the close of the retail offer	<b>23</b> <i>[not 18]</i>	<b>23</b> <i>[not 20]</i>
Issue of securities to retail holders no later than this day Entity provides ASX updated Appendix 3B (if required) Before quotation of retail offer securities (incl. bookbuild securities), entity provides ASX with the following: <ul style="list-style-type: none"> <li>• The date of allotment and number of securities for which quotation is sought</li> <li>• A statement setting out the issued capital of the entity following allotment</li> <li>• A distribution schedule of the securities, if the issued securities form a new class</li> </ul>	Not later than 12:00pm day before quotation	<b>24</b> <i>[not 19]</i>	<b>24</b> <i>[not 21]</i>
Quotation of securities issued under retail offer	Not later than <b>10</b> <i>[is more common rather than 7]</i> business days after the close of the	<b>25</b> <i>[not 20]</i>	<b>25</b> <i>[not 22]</i>

	retail offer and not before updated Appendix 3B is provided to ASX (if required)		
Despatch of holding statements to retail holders	Not more than <b>10</b> business days after the close of the retail offer	<b>25</b> [not 22]	<b>25</b> [not 24]

## 2. Drafting Matters

### 2.1. Drafting of the exceptions to Rules 7.1 and 10.11

Given the overarching class order relief may be amended or substituted by ASIC, it is suggested that the footnote to the exceptions note that –

*“See ASIC Class Order CO 08/35 (as may be amended or substituted by ASIC, from time to time) which provides...”*

AFMA recommends that the relevant exceptions acknowledge the following matters (as otherwise, those entities wishing to undertake an accelerated entitlement offer will still need to continue to submit ad hoc waiver applications to ASX to address the points below):

- As reconciliation issues may arise in relation to an accelerated offering, it may be necessary for the issuing entity to issue a small number of top up securities. We would recommend that this is recognised in the exceptions, so that separate relief is not required each time (in particular, so that any top-up offering does not detract from the issuing entity’s placement capacity).
- As part of conducting the offer “post ex date transactions” may be ignored in determining eligible holders.
- Nominees will be excluded from participating in the retail entitlement offer where (and to the extent that) beneficial holders were offered a right to participate in the institutional entitlement offer.
- Where a placement is proposed to be undertaken in connection with the entitlement offer, the placement capacity should be able to be automatically increased to include securities issued under the entitlement offer (both for the institutional and retail entitlement offer).

## 3. Additional Cost Concern

Proposal 4 is of concern to us. It is proposed that a fee will be imposed where an entity intends to undertake a capital raising and the trading halt component of the raising will coincide with the monthly expiry of exchange traded options (ETOs) traded over the entity’s securities. The rationale for the new fee, relating to the management of the orderliness of associated ETO markets is a novel one to our members. AFMA does not

consider it reasonable for the ASX to charge a fee if there is a trading halt (to undertake a capital raising) on the basis that:

- (a) the ETO market is one that the ASX manages and must realise that listed entities require flexibility in funding timing and method; and
- (b) the cost of notifying ETO holders should be a cost to manage this market, of which a listed entity has no choice on whether ETOs are listed under their name.

There is also no guidance on what the quantum of this fee will be.

#### **4. Trading Halts and Option Expiry**

The proposed requirement for a listed entity to give two business days notice of a Trading Halt for a capital raising relying on LR 7.1 presents a practical difficulty to issuers. It is normal practice for final board approval for a capital raising to be only given just prior to a Trading Halt being announced to the ASX. Therefore, this implies a notice to the ASX on the expectation of a Trading Halt would be done without final board approval. This requirement introduces an undue element of rigidity and risk. Issuers need to be able to retain flexibility around the final decision to issue to mitigate risk.

The requirements regarding 'record dates' in sections 3.20.1 and 3.20.2 raise a similar problem which is partly dealt with through the explanatory notes. Accordingly it is suggested that the proposed rule in 3.20.3 be changed so a notice can be given when the entity is reasonably certain that it will make the issue but still be subject to revision if final board approval is not forthcoming for the expected timing, to allow a Trading Halt to be called off.

Please contact me at [dlove@afma.com.au](mailto:dlove@afma.com.au) or (02) 9776 7995 if further clarification or elaboration is required.

Yours sincerely



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