

ASX Compliance Pty Ltd
20 Bridge Street
Sydney NSW 2000
Via email: mavis.tan@asx.com.au

15 May 2015

Attention: Ms Mavis Tan

Dear Ms Tan,

**Response to ASX Consultation Paper
Proposed changes to Guidance Note 8**

This is a submission by the Corporations Committee of the Business Law Section of the Law Council of Australia (the **Committee**) in response of the Consultation Paper issued by ASX Limited (**ASX**) dated 6 March 2015 entitled '*Consultation on proposed changes to Guidance Note 8 related to analyst and investor briefings, analyst forecasts, consensus estimates and earnings surprises*' (the **Consultation Paper**).

Thank you for the extension of time within which to make this submission. Generally, the Committee is supportive of the further guidance. Our more specific comments on the Consultation Paper are as follows:

1. Temptation to 'manoeuvre' analyst forecasts in a non-public manner
We agree it is worthwhile reiterating that a listed entity which has not given any earnings guidance is not necessarily required to disclose a 5-10 per cent difference between internal projections and analyst consensus estimates, and that the section 1041H test is only relevant where a representation has been given to the market in the form of earnings guidance. Some listed entities may still be tempted to 'manoeuvre' analyst forecasts in a non-public or selective manner to align them with the entities' internal projections, so as to avoid a disclosure obligation, but the pressure to do so should be less if it is clear that the disclosure obligation only arises if the difference between internal projections and analyst forecasts is 'so significant' that a reasonable person would expect the difference to have a material effect on price or value.
2. Circumstances where the market has not fully appreciated the import of prior announcements

The revised section 7.4 states that while there is generally no obligation on an entity to correct the earnings forecast of any individual analyst, or consensus estimates published by a market data vendor (other than in the circumstances of a

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market sensitive earnings surprise referred to above), if a difference does emerge the entity should be asking itself why that might be so. There may be legitimate reasons for this (such as where information has been withheld in reliance on LR 3.1A), or it could be that information which should have been disclosed has not been, or that the market has not fully appreciated the import of the entity's previous announcements under LR 3.1.

It might be useful if the revised guidance could expand a little on this last scenario, namely, where the market may not have fully appreciated the import of the entity's previous announcements. It may also be worthwhile stating that if this has occurred, the way to address it may be to make a further announcement to the market, rather than through contact to the analysts selectively.

3. Publishing analyst forecasts or consensus estimates

The proposed section 7.5 deals with the publication by a listed entity of analyst forecasts or consensus estimates. It states that ASX has no objection to an entity publishing a list of all of the individual analyst earnings forecasts, or a range showing the low, average and high forecasts, on its website (but not a single forecast or consensus estimate) along with a disclaimer that the entity does not endorse the forecasts or make any representation that its earnings will fall within the range of forecasts provided. Section 7.5 goes on to say that, to facilitate equality of access to information, the ASX will allow an entity to publish such a list or range, with a disclaimer to this effect, on the Markets Announcement Platform.

In circumstances where the listed entity is not giving earnings guidance, we are not sure why section 7.5 lends any support to the entity publishing analyst forecasts on its website, even with the disclaimer, or for that material to then be released on the Markets Announcement Platform. We understand the 'equality of information' argument, but think that if the entity is putting out an announcement, the market will simply ignore the disclaimer and treat the announcement as a form of de facto guidance. Publishing analyst forecasts on the website or Platform also encourages investors to require the entity to comment on those forecasts, significantly increasing the risk of de facto earnings guidance.

For these reasons, we do not think that ASX should be seen to be supporting the practice of publishing analyst forecasts, even with all of the explanation around the need for legal disclaimers.

The Committee would be pleased to discuss this submission if that is helpful. Please contact Guy Alexander on (02) 9230 4874, if you would like to do so.

Yours sincerely

A handwritten signature in black ink, appearing to read 'John Keeves', with a long horizontal line extending to the right.

John Keeves, Chairman
Business Law Section