RIMÔN
LAW FIRM EVOLVED

November 6, 2023

Submitted electronically
Ms. Vanessa Countryman
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: Petition for Rulemaking to amend Instruction 2 to the definition of "smaller reporting company" in Rule 12b-2 under the Securities Exchange Act of 1934

Dear Ms. Countryman:

Rimon respectfully submits this petition to the Securities and Exchange Commission (the "Commission") pursuant to Rule 192(a) of the Commission's Rules of Practice requesting that the Commission initiate a rulemaking project regarding Instruction 2 to the definition of "smaller reporting company" in Rule 12b-2 under the Securities Exchange Act of 1934. The requested amendment to Instruction 2 would treat foreign private issuers similar to domestic issuers in relation to the requirement for an auditor attestation report under Section 404(b) of the Sarbanes-Oxley Act ("SOX").

Specifically, we respectfully request that the Commission add one sentence to Instruction 2 to the "smaller reporting company" definition that would permit a foreign private issuer to rely upon the definition of "smaller reporting company" solely for purposes of determining the applicability of paragraphs (1)(iv) and (2)(iv) of the "accelerated filer" and "large accelerated filer" definitions in Rule 12b-2 *without* using the forms and rules designated for domestic issuers or providing financial statements prepared in accordance with U.S. Generally Accepted Accounting Principles.

We believe that the current regime does not adequately fulfill its stated purpose with respect to smaller foreign private issuers and, for this reason, recommend one sentence be added to Instruction 2 to the "smaller reporting company" definition that would be beneficial to smaller foreign private issuers and the financial markets as a whole. Absent such change, smaller foreign private issuers incur significantly higher compliance costs than domestic smaller reporting companies.

The high compliance costs under Section 404(b) could compel smaller foreign private issuers to delist their securities from their U.S. stock exchange and deregister their securities under the Securities Exchange Act. For example, two of our smaller foreign private issuer clients, each a biotech company with a primary listing on the Australian Securities Exchange ("ASX") and a secondary listing on Nasdaq, could seek to take such action. Like many things in life, such a decision is based upon a cost-benefit analysis and the cost of compliance with Section 404(b) could overweigh the benefit of a smaller foreign private issuer's shares being listed on Nasdaq. The annual costs of complying with Section 404(b) for each client is more than US$500,000, which is money that could be spent on their research and development programs.

1. Background

In March 2020, the Commission amended the definitions of "accelerated filer" and "large accelerated filer" in Rule 12b-2 (the "Amendment"). The effect of the Amendment was, in part, to exempt certain smaller issuers with little revenue and public float from the obligation to file an auditor attestation report under Section 404(b) of SOX regarding the management's assessment of the effectiveness of internal control over financial reporting ("ICFR").

The first sentence on the first page of the adopting release, *Accelerated Filer and Large Accelerated Filer Definitions*, Release No. 34-88365 (March 12, 2020) (the "Release") articulates the primary goal of the Amendment to the definition of "accelerated filer" – to "*reduce unnecessary burdens for certain smaller issuers*".

On pages 30 and 31 of the Release, the Commission states:

> "*Although the average annual cost savings may represent a small percentage of the average affected issuer's revenues and market capitalizations, we believe those savings may be meaningful given that affected issuers have, on average, negative net income and negative net cash flows from operations. More generally, low-revenue issuers are likely to face financing constraints because they do not have access to internally generated capital. Therefore, the average savings of $210,000 per year for these issuers may be put to productive use such as developing the company*."

On page 31 of the Release, the Commission notes the decline of smaller issuers since the introduction of SOX and states that "*we believe that the described cost reductions associated with the final amendments could be a positive factor in encouraging additional small companies to register their securities offerings or a class of their securities*". The Commission expressed a hope that reducing the compliance cost on smaller issuers could reverse a trend of fewer small companies listing on U.S. exchanges.

On pages 38-39 of the Release, the Commission concludes:

> "*Not only is the ICFR auditor attestation requirement costly in general, as discussed above, a number of commenters asserted that the ICFR auditor attestation requirement is disproportionately costly to small and low-revenue issuers. We agree that the costs of the ICFR auditor attestation requirement may be particularly burdensome for these issuers because they include fixed costs that are not scalable for smaller issuers*."

2. Auditor attestation requirement

A major implication for a registrant that qualifies as "accelerated filer" is that such registrant has the obligation to file an auditor attestation report. Such obligation applies to both domestic issuers and foreign private issuers ("FPIs"), as defined in Rule 405 under the Securities Act of 1933.

Item 15(c) of Form 20-F requires an attestation report of a registered public accounting firm to be included in the annual report if an FPI is an "accelerated filer" or a "large accelerated filer", other than an emerging growth company. Such attestation report provides an opinion from a registered public accounting firm on the assessment performed by a registrant's management on internal control procedures over the registrant's financial reporting system.

Following the Amendment, the term "accelerated filer" is defined in Rule 12b-2 as an issuer that meets the following conditions as of the end of its fiscal year:

- the issuer had an aggregate worldwide market value of the voting and non-voting common equity held by its non-affiliates of $75 million or more, but less than $700 million, as of the last business day of the issuer's most recently completed second fiscal quarter;
- the issuer has been subject to the requirements of section 13(a) or 15(d) of the Act for a period of at least twelve calendar months;
- the issuer has filed at least one annual report pursuant to section 13(a) or 15(d) of the Act; and
- *the issuer is not eligible to use the requirements for smaller reporting companies under the revenue test in paragraph (2) or (3)(iii)(B) of the "smaller reporting company" definition in this section, as applicable*. (emphasis added)

As provided in the last bullet point above, an issuer that qualifies as a "smaller reporting company" ("SRC") under the "revenue test" is not an "accelerated filer" and, as a result, is exempt from the auditor attestation report requirement. A registrant would satisfy the revenue test if either:

- it had an annual revenue of less than $100 million and either no public float or a public float of less than $700 million; or
- if it exceeded in a year either $100 million in revenue or a public float of $700 million, or both, the registrant determines in a subsequent year that its public float and annual revenues do not exceed certain thresholds as set forth in the definition.

3. Significant compliance costs and administrative burden on smaller reporting FPIs

In the Release, the Commission acknowledged that the burden imposed by the attestation report requirement could negatively impact an issuer's business activities as it stated on page 92:

> "*The ICFR auditor attestation requirement may impose costs on issuers and investors beyond the direct costs of compliance. For example, an increased focus on ICFR as a result of the ICFR auditor attestation requirement could have negative effects on issuer performance, if it creates a distraction from operational matters or reduces investment or risk-taking*."

While we seek to have one sentence added to Instruction 2 to the "smaller reporting company" definition for the benefit of all smaller reporting FPIs, we believe it would be helpful to illustrate the effect the current definition is having on one of our Australian clients that we refer to as the "Australian Company".

For context, we note that the Australian Company:

- has its primary listing on the ASX and a secondary listing on Nasdaq;
- is a biotech company with 35 employees, including 25 employed in research and development, 1 in intellectual property management and 9 in general management and administration;
- is no longer an "emerging growth company";
- had an aggregate worldwide market value of the voting and non-voting common equity held by its non-affiliates of more than $75 million but less than $700 million; and
- had no revenue in its most recent fiscal year.

Last year we submitted a draft no-action request letter to the Staff of the Commission seeking confirmation that the Staff would not recommend enforcement action to the Commission if the Australian

Company were to omit the auditor attestation report from its annual report on Form 20-F as long as the Australian Company is not an "accelerated filer" or a "large accelerated filer" but subject to paragraph (iv) of those definitions being relevant even if the Australian Company does not report as a SRC on domestic forms or prepare financial statements using U.S. generally accepted accounting principles ("U.S. GAAP"). The Staff indicated that they would not issue such a no-action letter.

Thus, absent the addition of one sentence to Instruction 2 to the definition of "smaller reporting company" in Rule 12b-2 as we propose, such a company would need to report on domestic forms and prepare financial statements using U.S. GAAP, regardless of the compliance burden, if it wanted to avail itself of paragraph (iv) under the "accelerated filer" definition This position is rooted in footnote 239 to the Release, which footnote references the addition of Instruction 2 to the "smaller reporting company" definition to clarify the position that an FPI is not eligible to use the requirements for a SRC unless it uses the forms and rules designated for domestic issuers and provides financial statements prepared in accordance with U.S. GAAP.

On page 45 of the Release, the Commission notes that "foreign issuers that qualify as FPIs or SRCs are permitted to avail themselves of special accommodations unique to each reporting regime, but must select one reporting regime or the other". We agree and, consistent with the law prior to the adoption of the Release, believe this does not mean a smaller FPI should have to incur a significant compliance burden and cost - whether it be in relation to the attestation report requirement in Item 15(c) of Form 20-F or using forms for domestic issuers that require financial statements to be prepared in accordance with U.S. GAAP (which would be in addition to financial statements prepared in accordance with IFRS for the FPI's home market) and potentially conflict with the reporting requirements for the FPI's home market. Each of these options poses a costly compliance burden on a smaller FPI and could pressure it to delist from its U.S. stock exchange and deregister its securities under the Exchange Act.

Such a position results in disparate treatment against many FPIs, particularly those with a primary exchange in a foreign country, because they cannot feasibly report on forms and rules designated for domestic issuers and provide financial statements prepared in accordance with U.S. GAAP while, at the same time, comply with different (and sometimes conflicting) reporting requirements and accounting principles designated by their primary exchange or home country.

As a result, the Australian Company is now incurring significant compliance costs and administrative burdens. Last year the Australian Company received a fee quote of US$350,000 from a consultant to advise on compliance with Section 404(b). Instead, the Australian Company hired an additional staff person at a lower cost and limited its use of the consultant. Nonetheless, Section 404(b) compliance costs have exceeded US$500,000 in each of its past two fiscal years and the same is expected in the current fiscal year.

For the most recent fiscal year, its costs for complying with Section 404(b) were as follows:

Increase in costs to comply with Section 404(b) of SOX	**Costs in US$**
Increase in employee costs for work resulting from the attestation report process	$235,000
Increase in auditor fees related to the attestation report	225,000
Additional cost on ERP (Enterprise Resource Planning) system	35,000
External consultant to assist the company	21,000
Increase in fees for financial printer for additional Edgar work	9,000
Total increase	**$525,000**

We note that some of the higher auditor fees resulted from the need of the Australian Company's Australian-based auditor to consultant with their U.S.-based colleagues who have more experience with Section 404(b). In short, the company must pay for the audit firm's internal cross-border communications and training of its Australian team.

We also note that we have another Australian client dual listed on ASX and Nasdaq that would satisfy the definition of "smaller reporting company" except for the fact it reports as a foreign private issuer. This company also estimates that its costs for compliance with Section 404(b) exceed US$500,000 annually.

Faced with limited resources, the compliance costs for Section 404(b) can have a material impact on the ability of these two Australian biotech companies to conduct their clinical trials and develop their product candidates. Each company has less resources to conduct its clinical trials due to increased compliance costs under Section 404(b). The high compliance costs could cause such companies to consider delisting from Nasdaq and terminate registration of their shares under the Exchange Act when possible. Ironically, a delisting by such a smaller issuer is what the Commission hoped to avoid when it amended the definition of "accelerated filer".

4. Reporting as a SRC is not feasible for smaller reporting FPIs

We understand that currently the only way for a smaller reporting FPI to avoid the attestation requirement (assuming it is otherwise an "accelerated filer") is if it were to report as a SRC on domestic forms and prepare financial statements in accordance with U.S. GAAP. This unfortunately may not be a viable alternative, particularly if the FPI has a primary listing on a foreign stock exchange.

For example, given the Australian Company has its primary listing on ASX, if it were to report as a SRC, it would face enormous costs, conflicts and administrative burdens, including:

- preparing financial statements in accordance with (i) International Financial Reporting Standards ("IFRS") for the ASX and (ii) U.S. GAAP for purposes of periodic reports as an SRC;
- paying for audits and reviews of the financial statements under each of IFRS and U.S. GAAP;
- preparing periodic reports in compliance with ASX Listing Rules and different periodic reports under SEC rules as an SRC;
- reporting of equity interests for directors and officers under the SEC's rules while filing different reports under different rules with the ASX; and
- reconciling conflicting corporate governance and shareholder approval requirements under the rules of the ASX and Nasdaq because, as an SRC, the Australian Company could lose its "home country" exemptions as a FPI under Nasdaq's rules.

4.1 Overwhelming costs and administrative burden for a FPI to report as an SRC

Even though the Australian Company would not be required to file an attestation report as an SRC, the costs involved in using the forms for domestic issuers is expected to be higher than the costs of filing the attestation report. The Australian Company has estimated the costs that it would incur as an SRC and file reports using the forms available to domestic issuers would be substantial – $770,000 per year, as detailed below.

Increase in costs for Australian Company to report as a smaller reporting company	Costs in US$
Employing new U.S.-based staff with U.S. GAAP expertise and experience with reporting for a SRC, including establishing a presence for such staff in the United States	$300,000
Increase in Australian employee salary to account for additional working hours to manage quarterly and other additional reporting obligations	225,000
Increase in auditor fees to perform audit of annual financial statements on Form 10-K and review of quarterly reports on Form 10-Q under U.S. GAAP	135,000
Increase in fees of external legal counsel	75,000
Increase in fees of financial printer for additional Edgar filings	35,000
Total increase	**$770,000**

4.2 Significant conflicts under the reporting and corporate governance systems between the United States and the FPI's home jurisdiction

In addition to the compliance costs and administrative burden of reporting as an SRC, several conflicts exist between the U.S. and foreign reporting and governance systems that make reporting as a SRC virtually impossible for many smaller FPIs.

For instance, conflicts would arise in the Australian Company's reporting obligations as an SRC. For instance, the disclosure of certain matters such as executive compensation are different under SEC and ASX rules. Reporting in compliance with one set of rules could run afoul of the other set of rules.

Conflicts also arise in corporate governance. As a smaller issuer without any revenue in most years, the ability to raise equity capital is critical to the Australian Company. It has historically raised most of its equity capital in Australia and, if it were to report as an SRC, its ability to quickly raise capital in Australia could be severely undermined by Nasdaq's shareholder approval requirements that conflict with shareholder approval requirements under ASX Listing Rules. By way of example, a rights issue to all existing shareholders in Australia is not subject to shareholder approval under ASX rules but, as an SRC, could be subject to shareholder approval under Nasdaq rules. A requirement to seek shareholder approval under Nasdaq rules for a rights issuance in Australia would confuse investors and jeopardize such capital raisings due to the delay in obtaining shareholder approval, thus imperiling the company's solvency.

Further, given it would not be able to report in a format that is typical or consistent for an Australian company or a U.S. company, the Australian Company believes such inconsistency in reporting would likely have a negative impact on its ratings from external corporate governance reviewers (*e.g.*, Institutional Shareholder Service Providers and Proxy Advisors).

For further detail of the conflicting obligations, please see:

- *Annexure A* for a discussion of existing reporting obligations under ASX Listing Rules and the requirements for a SRC under SEC rules; and
- *Annexure B* for a discussion of the conflicts between corporate governance requirements under ASX Listing Rules and Nasdaq's corporate governance rules for an SRC.

While these annexures illustrate conflicts for an ASX-listed Australian company that would arise if it were to report under SEC rules as a SRC and comply with Nasdaq corporate governance rules if it ceases to report as a FPI, we believe that similar conflicts would arise for FPIs listed on other foreign stock exchanges if they were to report as an SRC.

4.3 Having a FPI report as an SRC would result in investor confusion

In addition to the cost, conflicting requirements and administrative burden, we are concerned that investors would be confused by a FPI reporting the same substantive information under two different reporting regimes and on different days.

For instance, as an SRC, the Australian Company would have 4 business days to file a "current report" on Form 8-K to announce major events that shareholders should know about. However, under ASX Listing Rule 3.1, the Australian Company is required to file "immediately" an announcement with ASX to report the same types of events under Form 8-K. To avoid selective disclosure, the Australian Company would need to file the ASX announcement on Form 8-K as Item 8.01 on the same calendar day (bearing in mind the advantage of time zone difference) and subsequently file another Form 8-K under the proper Item of Form 8-K.

As another example, the Australian Company would first report the results of a shareholder meeting to ASX in the format and in compliance with ASX rules. On the same calendar day, the same document would be filed as Item 8.01 (Other Events) on Form 8-K. Then, within a few days, the Australian Company would need to file another Form 8-K to report the results of the same shareholders meeting but in compliance with Item 5.07 (Submission of Matters to a Vote of Security Holders). Such duplicative reporting would confuse investors.

Similarly, given the Australian Company must file with ASX its financial statements prepared in accordance with IFRS within two months of its fiscal year end, those IFRS financial statements would be filed under Item 8.01 on Form 8-K and, weeks later, the Australian Company would have to file financial statements in accordance with U.S. GAAP on Form 10-K.

All of the duplicative and inconsistent reporting would confuse investors. They would be better informed with the Australian Company reporting solely as a FPI rather than filing with the SEC both ASX-required reports (on Form 8-K) and domestic reports as an SRC.

5. Risk factors for smaller reporting FPIs

Given the significant costs and administrative burden facing smaller reporting FPIs, we unfortunately feel it's necessary to include appropriate risk factors in annual reports and registration statements for FPIs, regardless of whether they are emerging growth companies.

The following is a sample risk factor for a smaller reporting FPI that is an "emerging growth company":

> ***We could become subject to the auditor attestation requirement under the Sarbanes-Oxley Act even if we have little or no revenue, thus imposing significant cost and administrative burden on us.***
>
> We currently qualify as an "emerging growth company" and, as a result, are exempt from the auditor attestation requirement under Section 404(b) of the Sarbanes-Oxley Act of 2002 in the assessment of internal controls over financial reporting. We expect to remain an emerging growth company until the last day of our fiscal year following the fifth anniversary of the completion of our first public offering in the United States. Once we cease to be an emerging growth company and the aggregate worldwide market value of our voting equity held by non-affiliates exceeds US$75 million as of our most recently completed second fiscal quarter, then we will be subject to the auditor attestation requirement in the assessment of the internal controls over financial reporting.
>
> While the U.S. Securities and Exchange Commission has acknowledged the significant cost of the auditor attestation requirement for small companies and provided an exemption for U.S. "smaller reporting companies" with less than US$100 million in revenue, the SEC has decided not to similarly exempt foreign

private issuers unless they comply with the reporting requirements for U.S. companies, including presenting financial statements in accordance with U.S. generally accepted accounting principles. Given the significant cost and administrative burden resulting from inconsistent reporting obligations under the rules of the SEC and ASX, it may not be feasible for us to comply with the SEC's reporting requirements for U.S. companies in the event the Company were to cease being an "emerging growth company" and have aggregate worldwide market value of our voting equity held by non-affiliates exceeding US$75 million.

In such event, we could be obligated to incur significant compliance costs (which in 2019 the SEC estimated to be US$210,000 per annum to comply with the attestation requirement under Section 404(b) of the Sarbanes-Oxley Act) and administrative burden given our limited number of personnel. If such costs were to become too significant, we could reconsider our listing on Nasdaq because, as the SEC has acknowledged, the savings for a small company could be put to more productive use such as developing the company.

The following is a sample risk factor for a smaller reporting FPI that is not an "emerging growth company":

We have become subject to the auditor attestation requirement under the Sarbanes-Oxley Act, thus imposing significant cost and administrative burden on us.

Given the aggregate worldwide market value of our voting equity held by non-affiliates exceeded US$75.0 million as of our most recently completed second fiscal quarter and we no longer qualify as an "emerging growth company", we have become subject to the auditor attestation requirement under Section 404(b) of the Sarbanes-Oxley Act of 2002 in the assessment of internal controls over financial reporting.

While the U.S. Securities and Exchange Commission has acknowledged the significant cost of the auditor attestation requirement for small companies and provided an exemption from this requirement for U.S. "smaller reporting companies" with less than US$100 million in revenue, the SEC has decided not to similarly exempt "foreign private issuers" such as the Company. As the SEC has indicated, the only way for the Company to avoid the auditor attestation requirement would be for the Company to report on U.S. domestic forms as a "smaller reporting company". Such alternative, however, is not feasible for us given the significant cost (including preparing financial statements in accordance U.S. generally accepted accounting principles as well as IFRS), administrative burden on our limited number of personnel and conflict with our obligations under ASX Listing Rules and the Australian Corporations Act.

As a result, the Company is now subject to new significant compliance costs (which the SEC estimated to be US$210,000 per annum in 2019 and which were more than double that amount for us in our most recent fiscal year). If such costs are too significant in future years, we could seek to delist from Nasdaq, deregister our securities under the Securities Exchange Act so the Company would no longer be subject to such compliance burden and retain a listing solely on ASX. As the SEC acknowledged in its release providing the exemption for smaller reporting companies, the savings for a small company could be put to more productive use such as developing the company.

If the one sentence is added to Instruction 2 to the "smaller reporting company" definition as we request, then such risk factors would be deleted.

6. The purpose of the Amendment is equally applicable to smaller reporting FPIs

In the Release, the Commission outlined the policy reasons that supported the Amendment. In particular, the first sentence on the first page of the Release states that the primary goal of the Amendment is to "*reduce unnecessary burdens for certain smaller issuers*". As part of the efforts to achieve the primary goal of the Amendment, the Commission has exempted domestic registrants that qualify as an SRC under the "revenue test" from the "accelerated filer" and "large accelerated filer" definitions and, as a result, from the requirement to file an auditor attestation report.

The policy underlying the Amendment is equally applicable to smaller reporting FPIs that meet the thresholds of the "revenue test" included in paragraph (2) and (3)(iii)(B) of the "smaller reporting company" definition because the costs and burdens of the auditor attestation would not be different than the costs and burdens applicable to domestic issuers that qualify as SRCs. We do not believe there is any public policy reason to effectively discriminate against smaller reporting FPIs compared to smaller reporting domestic companies. As discussed above, the costs and administrative burden for the Australian Company and other FPIs to report on domestic forms, including reporting financial statements in accordance with U.S. GAAP, outweigh the benefits of an exemption from the auditor attestation report requirement.

The purpose of the Amendment is not properly served by its normative translation into Instruction 2 to Rule 12b-2. The purpose of the Amendment is to alleviate the costs and burdens on smaller issuers, regardless of their place of incorporation. As the Commission has observed in the Release, smaller issuers have usually negative net income and negative cash flow. The costs that could be saved from the auditor attestation report exemption are viewed by the Commission as "meaningful". If that is the case, such savings continue to be "meaningful" savings regardless of whether the relevant issuer is a FPI or a domestic issuer.

The current wording of Instruction 2 to Rule 12b-2 is also incompatible with the Commission's statement on page 31 of the Release. In the Release, the Commission notes the decline of smaller issuers since the introduction of SOX and states that "*we believe that the described cost reductions associated with the final amendments could be a positive factor in encouraging additional small companies to register their securities offerings or a class of their securities*". The Commission's concern with the decline of smaller issuers and the hope to reverse the trend through the Amendment is equally applicable to smaller FPIs.

As a result, the current wording of Instruction 2 to Rule 12b-2 may encourage U.S.-listed FPIs to delist their securities and discourage other FPIs from listing their securities on a U.S. stock exchange. Thus, the current regulatory framework could cause a decrease in the number of FPIs listed on U.S. stock exchanges and dampen the appeal of a U.S. listing for FPIs. Such a result would be contrary to the goal of "promoting" the expansion of the U.S. capital markets, which the Commission has been entrusted with since its inception.

7. Request for rulemaking

We propose to amend Instruction 2 to the definition of "smaller reporting company" in Rule 12b-2 to effectively treat FPIs similar to domestic issuers in determining whether they are an "accelerated filer" or a "large accelerated filer" and, as a result, have to procure an auditor attestation report.

Specifically, we request that one sentence be added at the end of Instruction 2, as follows (with the new sentence underlined):

> Instruction 2 to definition of "smaller reporting company": A foreign private issuer is not eligible to use the requirements for smaller reporting companies unless it uses the forms and rules designated for domestic issuers and provides financial statements prepared in accordance with U.S. Generally Accepted Accounting Principles. <u>Solely for purposes of determining the applicability of paragraphs (1)(iv) and (2)(iv) of the "accelerated filer" and "large accelerated filer" definitions in this section, a foreign private issuer may rely upon the definition of "smaller reporting company" without using the forms and rules designated for domestic issuers or providing financial statements prepared in accordance with U.S. Generally Accepted Accounting Principles</u>.

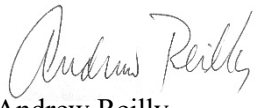
RIMÔN
LAW FIRM EVOLVED

8. Conclusion

We firmly believe that the proposed addition to Instruction 2 to the definition of "smaller reporting company" under Rule 12b-2, in the terms outlined above, support the purpose of the Amendment and can eliminate a deterrent for FPIs to list, or to maintain a listing, on a U.S. stock exchange. We do not believe there is any public policy reason to effectively discriminate against smaller reporting FPIs compared to smaller reporting domestic companies. Thus, we urge the Commission to undertake this reform promptly.

If you have any questions or require additional information, please do not hesitate to contact the undersigned via email (andrew.reilly@rimonlaw.com) or telephone (+61 2 9055 6965).

Sincerely,



Andrew Reilly
Partner

RIMÔN
LAW FIRM EVOLVED

Annexure A

Comparison of ASX and SEC reporting requirements for Australian Company if it were to report as a "smaller reporting company"

If the Australian Company were to report as a "smaller reporting company", then it would be subject to reporting requirements as a U.S. domestic company instead of as a "foreign private issuer". This document compares reporting requirements under ASX Listing Rules for the Australian Company currently and under SEC rules if the Australian Company were to report as a "smaller reporting company".

Item	ASX requirement	SEC requirement	Comment
Financial statements	Australian companies must prepare financial statements in compliance with Australian Accounting Standards, which are consistent with International Financial Reporting Standards.	Smaller reporting companies must prepare financial statements in compliance with U.S. generally accepted accounting principles.	The preparation of financial statements under two sets of accounting principles would require significant additional resources and pose a tremendous burden on a smaller company. The fees of an outside auditor would also increase significantly. Investors could be confused by the different financial statements for the same periods. In addition, some U.S. investors could mistake the reporting currency as the U.S. dollar even though there would be disclosure that the reporting currency is the Australian dollar.
Annual reports	Under ASX Listing Rules, a listed entity must: • prepare financial statements in respect of each financial year, have the statements audited and obtain an auditor's report; • as soon as available but by no later than 2 months after the end of the financial year, give the ASX a preliminary report together with an Appendix 4E containing the prescribed information;	Smaller reporting companies must file annual reports on Form 10-K with the SEC within 90 days after the end of each fiscal year. The annual report on Form 10-K must include financial statements prepared in accordance with U.S. generally accepted accounting principles.	The preparation of the annual reports under two different sets of rules and about the same time would require significant additional company resources and pose a tremendous burden on a small company. In particular, the required disclosure of the compensation of directors and executives is materially different under the two sets of rules.

Item	ASX requirement	SEC requirement	Comment
	• within 3 months after the end of the financial year, file with the ASX the audited financial statements, directors' report and auditor's report; and • within 4 months after the end of the financial year, send the annual report to shareholders who have elected to receive a copy of the report and make available the annual report on a website.		External counsel legal fees would also increase significantly to navigate the different reporting requirements and inconsistencies.
Half yearly report	Under ASX Listing Rules, a listed entity must: • prepare financial statements for the first six months of the financial year and have the statements reviewed by the company's auditor; • prepare a directors' report; and • within two months after the end of the half-year, file the financial statements, directors' report and auditor's report with the ASX together with Appendix 4D.	Same as for quarterly reporting, as discussed below.	The preparation of a quarterly report on a Form 10-Q requires additional company resources as well as additional work from external legal counsel and auditors, particularly regarding the review of financial statements both under GAAP and IFRS.
Quarterly reporting	Quarterly cash flow reports on Appendix 4C must be filed with the ASX by certain entities (being entities which at listing had more than half of their assets in cash or assets readily convertible to cash) within one month after each quarter of a listed entity's financial year.	Smaller reporting companies must file quarterly reports on Form 10-Q within 45 days after each of their first three fiscal quarters. Quarterly reviews by an independent registered public accounting firm are required.	The preparation of a quarterly report on a Form 10-Q requires additional company resources as well as additional work from external legal counsel and auditors, particularly to review financial statements both under GAAP and IFRS.
Continuous disclosure / current reporting	ASX Listing Rule 3.1 requires an ASX-listed entity to disclose any information that a reasonable person would expect to have a material effect on the price or value of the entity's securities, immediately upon becoming aware of such information.	A current report on Form 8-K must be filed within 4 business days of the occurrence of certain events set forth in Form 8-K.	The form and process requirements under the ASX Listing Rules are different from Form 8-K. The Australian Company would incur substantial costs in legal fees and administrative burden if it were to report the same event using two different types of forms with different instructions.

Item	ASX requirement	SEC requirement	Comment
			Investors could be confused by the reporting of the same substantive event in different formats and on different days.
Reporting of interests by Directors, executive officers and more than 10% shareholders	An ASX-listed company must report a director's initial notifiable interest in the company's securities, and any change in that notifiable interest, within 5 business days of the relevant date. The notifiable interests include relevant interests in securities of the company (both quoted shares and unquoted securities such as employee options), and interests in contracts that may call for the delivery of securities in the future. No reporting obligation applies to an officer or more than 10% shareholder of a company unless the person is also a director. However, a 10% shareholder in an Australian company will be subject to the substantial holder provisions under the Australian Corporations Act.	Directors, officers and persons who beneficially own more than 10% of a company must report to the SEC their beneficial ownership interest and changes in ownership. A Form 3 must be filed within 10 days after a person becomes a director, executive officer or greater than 10% shareholder. A Form 4 must be filed within 2 business days after a change in beneficial ownership.	The information required to be disclosed under ASX Listing Rules and SEC rules and time constraints imposed by ASX Listing Rules and SEC rules are different. Compliance would result in an administrative burden and an increase in legal costs.
Reporting results of a shareholders meeting	ASX Listing Rule 3.13.2 requires a company to disclose information about the results of a shareholders meeting.	Item 5.07 of Form 8-K requires a company, within 4 business days of a shareholders meeting, to disclose information about the results of the shareholders meeting.	The forms required by the ASX Listing Rules are different from Form 8-K. The Australian Company would incur additional administrative burden and legal fees if it were to report the same event using two different types of forms with different instructions and on different days. Investors could be confused by the reporting of the same substantive event in different formats.

RIMÔN
LAW FIRM EVOLVED

Annexure B

Comparison of ASX and Nasdaq corporate governance requirements for Australian Company if it were to report as a "smaller reporting company"

If the Australian Company were to report as a "smaller reporting company" instead of as a "foreign private issuer", then it may not be able to claim "home country" exemptions from certain Nasdaq corporate governance requirements. This document compares corporate governance requirements under ASX Listing Rules for the Australian Company currently (with "home country" exemptions under Nasdaq rules) and under Nasdaq rules if it were to report as a "smaller reporting company" rather than as a "foreign private issuer".

Item	ASX requirement	Nasdaq requirement	Comment
Quorum for shareholders meeting	The ASX Listing Rules do not require an ASX-listed issuer to have a quorum of any particular number of the outstanding ordinary shares, but instead allow a listed issuer to establish its own quorum requirements.	Under Nasdaq Listing Rule 5620(c), a quorum must consist of holders of 33 1/3% of the outstanding shares.	Nasdaq Listing Rule 5620(c) would increase the regulatory burden on the Australian Company.
Shareholder approval for acquisition of stock or assets of another company	ASX Listing Rule 10.1 requires shareholder approval, with an independent expert's report as to the fairness of the transaction, in relation to an acquisition or sale of assets the price or value of which exceeds 5% of the listed company's shareholders' funds, where the seller or buyer of the assets is: • a related party of the company (such as a director, a family member of a director, or their controlled entities), • a 10% substantial shareholder, • an associate of any person mentioned above, or • a person who was in one of the above categories in the previous 6 months.	Under Nasdaq Listing Rule 5635(a), shareholder approval is required prior to the issuance of securities: • other than in a public offering for cash, if (i) the common stock issued will have a voting power of at least 20% of the voting power outstanding immediately before such issuance; (ii) the number of shares of common stock issued will be at least 20% of the number of shares outstanding before the issuance; or • any director, officer or substantial shareholder of the issuer has at least 5% interest (or such persons collectively have at least 10% interest) in the issuer, the assets to be acquired or in the consideration to be paid, and the issuance of common stock could result in an increase in shares of common stock or voting power of at least 5%.	The ASX and Nasdaq rules are inconsistent. Attempting to comply with the differing requirements would impose a significant administrative burden and result in increased legal costs.

Item	ASX requirement	Nasdaq requirement	Comment
Capacity to issue a significant number of shares	ASX Listing Rule 7.1 allows a company to issue securities in private placements up to 15% of the outstanding ordinary shares over a 12-month period, without approval of shareholders. There is no restriction on the issue price under this ASX rule. In addition, Listing Rule 7.1A allows "eligible entities" (small to mid-cap companies) to have an additional 10% placement capacity over a 12-month period. It requires a specific approval by shareholders at every year's annual shareholders meeting. This element of placement capacity has an issue price limit, being a maximum 25% discount to market price. If the issuance of shares in a private placement exceed the 15% or 25% placement capacity, then shareholder approval is required with respect to any issuance of shares that exceeds such placement capacity at a special shareholders meeting. Such shareholder approval is valid for 3 months from the date of approval. The above restrictions do not apply to entitlement offers, rights issuances or share purchase plans.	Under Nasdaq Listing Rule 5635(d), shareholder approval is required if the issuance of securities in any private placement representing at least 20% of the voting power outstanding before such issuance is made at a price that is less that either (i) the closing price immediately preceding the signing of the binding agreement to issue the securities, or (ii) the average of the common stock closing price for the 5 trading days immediately prior to the signing of the agreement to issue the securities. Shareholder approval is not required when the issue price is at a premium.	The ASX and Nasdaq rules are inconsistent and, thus, could cause conflict and administrative burden in trying to comply with inconsistent rules. In addition, the conflict in rules could impede the ability of the Australian Company to raise capital. For instance, while ASX Listing Rules could permit it to undertake a capital raising without shareholder approval, Nasdaq rules could require shareholder approval and thereby jeopardize a capital raising in Australia.
Director independence – board composition	Listing Rule 4.10.3 requires an entity to disclose the extent to which it has followed the recommendations of the ASX Corporate Governance Council – 4th edition ("ASX Recommendations"). One of the key ASX Recommendations is that a Board should have a majority of independent directors, including the Chair. The ASX Recommendations set out suggestions as to criteria for independence, but ultimately a Board can make its own determination.	Nasdaq Listing Rule 5605(b) requires a majority of board of directors to be comprised of independent directors (as defined in Rule 5605(a)), which excludes executive officers, employees and any person who has a relationship which would interfere with the exercise of independent judgment. Nasdaq Listing Rule 5605(a) provides a list of persons who cannot be independent directors, among which there are: • directors who in the prior 3 years were employees; • director who received from the issuer compensation in	The ASX and Nasdaq rules are inconsistent and, thus, could cause conflict and administrative burden. This would result in increased legal costs as the company seeks assistance in compliance.

Item	ASX requirement	Nasdaq requirement	Comment
	Under Listing Rule 4.7.3, an entity must lodge with ASX a completed Appendix 4G (Key to Disclosures regarding Corporate Governance Council Principles and Recommendations).	excess of US$120,000 during any period of 12 months in the prior 3 years, subject to exceptions such as compensation received for board or committee services; and • a director who is a controlling shareholder or executive officer of any company to which the issuer made, or from which the issuer received, payments for property or services in the current fiscal year or in the prior 3 fiscal years that exceed 5% of the recipient's consolidated gross revenues for that year, or US$200,000, whichever is more, subject to certain exceptions.	
Nomination committee	ASX Listing Rules do not require the establishment of a nominations committee. ASX Recommendation 2.1 recommends that companies establish a nomination committee of at least 3 members, which is composed of a majority of independent directors and is chaired by an independent director.	Nasdaq Listing Rule 5605(e) requires that director nominees be selected or recommended for selection by independent directors constituting a majority of the board's independent directors or a committee comprised exclusively of independent directors. A company must adopt either a formal charter or a board resolution that addresses the role and responsibilities of the committee or independent directors that select or recommend director nominees.	The Australian Company does not have a Nomination Committee. If it could no longer benefit from a home country exemption as an SRC, then it would have to incur costs to comply with the nomination process as established under the Nasdaq Listing Rules.
Compensation committee	ASX Listing Rules do not require the establishment of a compensation committee, unless the company is in the S&P/ASX 300 index. ASX Recommendation 8.1 recommends that companies establish a compensation committee of at least 3 members, which is composed of a majority of independent directors.	Nasdaq Listing Rule 5605(d) requires the establishment of a compensation committee and the adoption of a formal charter that specifies the committee's duties and responsibilities under the Nasdaq listing rules. The committee must have at least two members who are independent directors under Nasdaq listing rules.	The requirements for a compensation committee under ASX and Nasdaq rules are inconsistent and would thus impose an administrative burden on the Australian Company to comply with both sets of rules.