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November 3, 2014

Mr. Paul M. Dudek
Chief
Office of International Corporate Finance
United States Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549

Dear Mr. Dudek:

Regulation S-- Securities of Foreign Private Issuers Traded through ASX Bookbuild on the Australian Stock Exchange Limited

On October 8, 2013, the Australian Stock Exchange Ltd. ("ASX") launched a new on-market pricing and allocation platform ("ASX Bookbuild") within the construct of the ASX electronic trading platform.

ASX Bookbuild allows issuers to use an automated book-building function executed on the ASX platform rather than using traditional investment bank-driven book-building methods. ASX has licensed the patented pricing and allocation method from an Australian company, On-Market Bookbuilds Pty Ltd ("OMB"). The ASX Bookbuild facility is designed to increase transparency in pricing and allocation of securities by allowing all legally eligible investors to participate, improving price discovery and market efficiency.

Issuers and other distribution participants contemplating offerings through ASX Bookbuild have expressed interest in confirming the availability of the safe harbor provisions of Regulation S ("Regulation S") under the Securities Act of 1933, as amended (the "Securities Act") for offerings made using the ASX Bookbuild facility. Because of the manner in which offerings are conducted utilizing the ASX Bookbuild facility, it is not possible for the issuers and the distribution participants (the corresponding term in the ASX operating rules is 'Technical Lead Manager') to confirm the identity of investors and therefore to comply strictly with certain requirements of Regulation S.

This letter describes the rules and procedures that have been implemented in connection with offerings utilizing the ASX Bookbuild. OMB believes these arrangements meet the underlying investor protection concerns of Regulation S and provide reasonable procedures to prevent public distribution of Regulation S securities in the United States or, where applicable, to U.S. persons. Accordingly, OMB looks forward to receiving confirmation that compliance with the ASX rules described in this letter will allow foreign private issuers to rely on Regulation S Category 1 or Category 2 for offerings utilizing the ASX Bookbuild facility, as more specifically detailed under Conclusion and Request for Relief.

DESCRIPTION OF ASX BOOKBUILD

The ASX Bookbuild facility is a new capital raising service offered by the ASX. It provides an automated mechanism within the ASX electronic trading platform for issuers to price and allocate securities.

The ASX Bookbuild facility is available for primary offerings, whether for initial public offerings or for offerings by more seasoned issuers, or secondary block offerings (i.e., offerings that would typically include a book-building process, whether or not underwritten). Companies that choose to utilize the ASX Bookbuild facility, along with their lead managing investment bank, set certain pricing and allocation parameters including, among others, minimum bid price, coverage percentage (which determines the price in light of subscriptions or over-subscriptions) and type of bidder (e.g., priority of bidder as determined by the issuer). An issuer may choose to use the ASX Bookbuild facility for all or part of an offering and has discretion over what percentage of an offering, if any, is offered through the ASX Bookbuild facility.

OMB understands that an issuer's decision whether to use the ASX Bookbuild facility, and for what portion of an offering to utilize the ASX Bookbuild facility, is based on a number of factors, including the desire to allocate to certain types of investors (who could be included in a separate portion of an offering, or as part of the ASX Bookbuild facility as priority bidders), the liquidity in the issuer's securities, the issuer's confidence in attracting on-market bidders, the use of proceeds for the transaction, the size of the offering and the market capitalization of the issuer.

Once the bookbuild process has started, all brokers that are members of the ASX and their eligible investor clients are able to participate in the bookbuild and see pricing information and certain of the allocation parameters, allowing bidders to adjust their bids in order to receive an allocation. The parameters of the bookbuild determine the bookbuild price and allocation of securities based on investor demand and the bids entered into ASX Bookbuild, and allocations are made automatically by the facility upon the closing of a bookbuild.

Issuers and their investment bank advisers may provide for allocation of a certain percentage of the offering to priority bidders selected by the issuer, price leading bidders (who bid above the allocation price) and to other bidders at the determined allocation bid price, but are not able to accept or reject individual bidders or prevent participating brokers from placing bids on behalf of their eligible clients. Other than the selected priority bidders, the identity of clients of participating brokers is not known to the issuer or its lead managing investment bank.

Issuers that utilize the ASX Bookbuild facility are subject to the same regulatory requirements as other issuers, including requirements, subject to certain exceptions (generally for offerings that are either private placements or sold only to certain classes of sophisticated investors), that offers be conducted through a prospectus filed with the ASIC. In addition, the ASX imposes continuous disclosure obligations on listed companies requiring disclosure of material information.

OMB understands, based on the functionality and use of the ASX Bookbuild Facility, that a typical bookbuild is conducted as follows:

- An issuer seeks a trading halt from the ASX (commonly given by ASX while offerings are conducted) and announces the offering on the ASX Market Announcements Platform.
- The lead manager, which is an ASX “Sponsoring Broker,” has access to the ASX Bookbuild platform to input or change parameters as described below.
- If applicable, the lead manager, on behalf of the issuer, seeks bids from priority bidders. Where the issue is underwritten by the lead manager, the issuer and lead manager may require priority bidders to submit irrevocable bids at the minimum price (priority bidders are not under any obligation to increase their bids to the final price).
- When the lead manager and the issuer are satisfied that there is sufficient priority bid interest, the lead manager opens the ASX Bookbuild process.
- On opening of the ASX Bookbuild process, an automatic announcement is triggered to the ASX Market Announcement Platform. This announcement includes the public parameters of the offering.
- Every legally eligible investor may then bid via their broker. Brokers that enter bids are responsible for ensuring compliance with the terms of the offer, such as who is legally eligible to bid (refer to next page for more details).
- The lead manager, in consultation with the issuer, may revise the bookbuild parameters that control pricing and allocations in response to demand.
- If the lead manager changes a public parameter, an automatic announcement is generated to the ASX Market Announcements Platform. Certain parameters, including the allocations to priority bidders and the minimum percentage of the offer to be allocated in the on-market allocation, cannot be changed once the bookbuild process is opened.
- Brokers entering non-priority bids are able to see pricing information and their own bids. The lead manager is able to view pricing information and all entered bids and is able to provide real-time information to the issuer.
- When the issuer and the lead manager are satisfied with the bookbuild process, the lead manager initiates a closing instruction in the ASX Bookbuild Facility. After that closing instruction is initiated, the ASX imposes a random timer, after the expiry of which, the bookbuild closes. To prevent market manipulation and/or delayed bidding, there is no requirement for the issuer or distribution participant to inform the market in advance of when the bookbuild will close. As a matter of practice, the issuer and lead manager will generally advise the market a minimum length of time that the ASX Bookbuild Facility will be open with respect to any offer.
- All bids are binding on the issuer and bidders on close of the bookbuild, and no changes are permitted to either withdraw bids or not allocate to successful bidders. The ASX Bookbuild Facility automatically allocates securities to bidders based on the defined set of rules that apply the parameters that have been set by the lead manager.

All allocations are at the final bookbuild price and bids entered below the final bookbuild price do not receive an allocation. The allocation process prioritizes priority bids and bids above the clearing price as follows:

- bids from priority bidders that are equal to or above the final bookbuild price receive a priority allocation equal to a predetermined priority allocation percentage. If any part of priority bidder's bid that is equal to or above the final bookbuild price is not met in the priority allocation, it is included in the following allocation phases;
- bids from priority bidders and non-priority bidders above the final bookbuild price receive an allocation out of the percentage of securities reserved for price-leader bids; and
- remaining unfilled bids at or above the final bookbuild price are allocated on a pro-rata basis.

ASX BOOKBUILD RULES

The ASX is subject to the Corporations Act, the legislation that regulates stock exchanges in Australia. Under the Corporations Act, the functioning of the ASX is subject to two levels of supervision: (i) the regulation of admission, trading, clearing and settlement by the ASX itself; and (ii) the regulation of the ASX as a securities exchange and the market operated by the ASX by the Australian Securities and Investments Commission ("ASIC"). OMB has been advised by the ASX that only ASX Trade Participants can place an order into ASX Bookbuild (subject to complying with the market operation rules, including any selling restrictions). ASX lists ASX Trade Participants at <https://www.asxonline.com/CISParticipants/Reports/ParticipantsDirectory>. OMB notes that no ASX Trade Participant is included on the list of Commission-registered broker-dealers found at <http://www.sec.gov/foia/bdreports/bd080113.txt> (although many are affiliated with Commission-registered broker-dealers).

The ASX Bookbuild facility and participating brokers are governed by the specific operating rules of the ASX adopted by ASIC in connection with the ASX Bookbuild facility. In particular, the following restrictions, among others, apply to offerings utilizing the ASX Bookbuild facility:

- (i) the issuer must notify brokers as to any selling restrictions;
- (ii) before entering a bid on behalf of a client, brokers must have entered into an ASX Bookbuild Client Agreement with the client, the terms of which include a warranty from the client that they are aware of, and agree to, the terms of the offer and are entitled to bid under those terms;
- (iii) When a broker enters a bid (on its own behalf or on behalf of a client), the broker or the client (as applicable) warrant that they are aware of and agree to the terms of the offer and are entitled to enter that bid and subscribe to any securities allocated to it.

With respect to any U.S. selling restrictions in particular, selling restrictions, for persons in the United States (Category 1 offerings) or persons in the United States or U.S. persons

(Category 2 offerings), will be disclosed in each offering and, as indicated above, participating brokers (and their clients) will warrant that they are aware of and agree to such terms and are entitled to subscribe to the securities. Specifically, for both Category 1 and Category 2 offerings, brokers and their clients will warrant that (i) neither the broker nor the client was in the United States when the offering commenced, (ii) both the broker and the client remain outside the United States at the time the buy order is originated and (iii) the client is acting for its own account, with sole discretion for the account of another or acting without discretion for a beneficial owner who is outside the United States and, for Category 2 offerings, who is not a U.S. person. In the case of Category 2 offerings, brokers and their clients will additionally warrant that (i) neither the broker nor the client is a U.S. person within the meaning of Rule 902(k) of Regulation S and (ii) prior to the expiration of the 40-day distribution compliance period, if such broker or client is a distributor, dealer or a person receiving a selling concession, fee or other remuneration in respect of the securities sold, such broker or client will not sell the securities to a person in the United States or to a U.S. person within the meaning of Rule 902(k) of Regulation S. The ASX operating rules therefore address the actions of trading participants with respect to sales to U.S. persons or persons in the United States in line with the terms of the applicable offer, including resales by a trading participant of securities for which it receives an allocation. Furthermore, when a bookbuild process is launched via announcement on the ASX Market Announcements Platform it contains a legend stating that unless otherwise indicated, securities to which the offer relates are not being offered in the United States or to U.S. persons. Potential bidders are made aware of additional restrictions on sales through a prospectus made public on the ASX Market Announcements Platform, or, if no prospectus is required (e.g., in a private placement), the issuer is required to notify trading participants of the terms of the offering, including selling restrictions, by way of announcement through the ASX Market Announcement Platform.

COMPLIANCE WITH REGULATION S

Rule 903(a)(1) of Regulation S requires that an offer or sale of securities “shall be deemed to occur outside the United States within the meaning of Rule 901 if...[t]he offer or sale is made in an offshore transaction....”

The definition of offshore transaction provides that an offer not be made to a person in the United States and that, in relevant part, “at the time the buy order is originated, the buyer is outside the United States, or the seller and any person acting on its behalf reasonably believe that the buyer is outside the United States....”

As a result of the functionality of the ASX Bookbuild facility, including accessibility to the facility by all ASX member brokers and the automated allocation of securities, the distribution participants will not know the identity of clients of participating brokers. Therefore, it is necessary for issuers and distributors to rely on the ASX Bookbuild rules and the warranties of participating brokers and clients described above to establish their reasonable belief that a transaction is an “offshore transaction” for purposes of Rule 903(a)(1).

The requirements of Rule 903(b)(2), with respect to Category 2 offerings, provide, in relevant part, that (1) the offer or sale, if made prior to the expiration of the 40-day distribution compliance period, not be made to a U.S. person or for the account or benefit of a U.S. person, and (2) prior to the expiration of the 40-day distribution compliance period any

distributor selling securities to a distributor, dealer, or a person receiving a selling concession, fee or other remuneration in respect of the securities sold, send a confirmation or other notice stating that the securities are subject to restrictions. Since these requirements can be met only by requiring the issuer and lead managing investment bank (or other distributor) to know the identity of the participating brokers' clients (including whether participating brokers are acting for their own accounts), which is inconsistent with the ASX Bookbuild functionality, issuers and distributors need to be able to rely on the selling restrictions included in any offering and the rules related to ASX Bookbuild, including the warranty of trading participants (and their clients) that they will comply with those selling restrictions as described above, to satisfy the Category 2 distribution compliance period requirement. Similarly, the selling restrictions specified by the issuer that will be imposed by the ASX rules in Category 2 offerings will provide notice of applicable selling restrictions to any investor to which a confirmation or other notice would otherwise have been required for purposes of the Category 2 safe harbor.

OMB submits that as part of the ASX, a well-known, orderly, regulated marketplace, where member brokers are subject to prudential standards,¹ the requirements of ASX with respect to ASX Bookbuild described above provide reasonable procedures to prevent public distribution of Regulation S securities in the United States and, where applicable, to U.S. persons, and are designed to put market participants on notice of the restrictions applicable to Regulation S securities. Since Category 1 and Category 2 of Regulation S do not specify the exact procedural safeguards issuers and distributors are expected to put in place to ensure compliance with the applicable selling restrictions, contractual undertakings have traditionally been relied upon by distribution participants for this purpose. The warranties made pursuant to the ASX operating rules by brokers and their clients when securities are sold through the ASX Bookbuild facility are at least comparable to traditional contractual agreements between issuers and distributors in terms of ensuring compliance with the requirements of Regulation S and, coming from the initial investors, perhaps even more effective. As such, compliance with the rules applicable to ASX Bookbuild offerings should be able to be relied on to prevent persons in the United States (Category 1 offerings) or persons in the United States or U.S. persons (Category 2 offerings) from investing in such offerings and thus should form the basis for compliance with the safe harbors in Regulation S.

CONCLUSION AND REQUEST FOR RELIEF

OMB respectfully requests confirmation that foreign private issuers selling Category 1 and Category 2 Regulation S securities utilizing the ASX Bookbuild facility can rely, where they do not have actual knowledge of a bidder's identity, on the rules and contractual obligations of participating brokers and clients to comply with the requirement in Rule 903(a)(1) that sellers have a reasonable belief that a buyer is outside the United States.

In addition, OMB requests confirmation that distribution participants can rely on selling restrictions that set out the restrictions on offers and sales to U.S. persons prior to the expiration of the 40-day distribution compliance period, including notice of ongoing restrictions with respect to distributors, dealers or persons receiving selling concessions, for compliance with the distribution compliance period restriction and notice requirements in Rule 903(b)(2).

¹ We note the Commission included the ASX as a "Designated offshore securities market" in Rule 902(b).

OMB is not requesting relief with respect to any other requirements of Regulation S.

If you have any questions or comments concerning this request, please contact the undersigned.

A handwritten signature in black ink, appearing to read "Ben Bucknell". The signature is fluid and cursive, with a long horizontal stroke at the end.

Sincerely yours,

Ben Bucknell
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cc: Leslie N. Silverman
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