



Question on Notice - SEC Rule 10b5-1

During ASX's appearance at the Fintech Inquiry Select Committee on Financial Technology and Regulatory Technology on 12th February, 2021 we took the following question on notice :

"Also, ASX, if you could take on notice perhaps a bit more information about how this would add to our suite of tools as a country which is hungry for capital, especially in light of our obviously strong performance in the pandemic and also what's happening in Hong Kong and some of those geopolitical events there, that could be quite useful. We would be grateful for any further information you could provide."

Companies consider a number of factors when deciding where to list and raise capital. There are many reasons why Australia is an attractive proposition for issuers relative to the offshore markets that we compete with vigorously. These include:

- a) Australia is the world's 4th largest pension market, with ~\$3 trillion in funds under management
- b) ASX is a globally recognised stock exchange – top 10 by number of listings, market capitalisation and capital raised (and 5th globally by secondary capital raised in 2020)
- c) ASX offers companies:
 - a. The ability to list and achieve S&P index inclusion at an earlier stage compared with US markets
 - b. Access to an investor base that is active in small and mid-cap stocks (\$100m to \$1bn mkt cap)
 - c. Competitive metrics compared with other stock exchanges, e.g. valuation, liquidity, analyst coverage
 - d. A growing technology peer group of over 260 companies and total market capitalisation of ~\$180bn
- d) A robust and balanced, regulatory environment for capital markets.

However, the lack of a local equivalent to SEC Rule 10b5-1 is a significant factor that counters these positive factors. The issue of founder and insider trading is material enough to be a tipping point in the decision that companies take when choosing their listing venue. Moreover, it is also an issue considered by current ASX-listed companies when contemplating moving their listing from ASX to another exchange offshore. SEC Rule 10b5-1 provides a framework that already operates in a well-regulated environment and, in turn, a potential solution to a key impediment in growing the ASX-listed technology sector. ASX has been successful to date, however we cannot be complacent and some opportunities may have been missed. As competition grows globally and more technology-related companies eye the public markets, Australia needs to focus on remaining competitive. This is one example where Australia can enhance its attractiveness. There is a risk that Australia might fall behind if there is delayed or inadequate policy response to evolving market dynamics and opportunities

Accordingly, this proposed rule change is not about adding to the suite of tools or the other competitive advantages that already exist. It is about removing a significant impediment.

Bitcoin

ASX would also like to take the opportunity to address another matter. We note a recent article in the AFR - [ASIC open to a bitcoin-linked ETF listing on the ASX \(afr.com\)](#) - that may be of interest to the Committee.

In this article, ASX CEO Dominic Stevens is quoted as follows about bitcoin developments:

“We have taken a cautious view in the past to this. That is changing to a degree: we are looking at it,” ASX CEO Dominic Stevens told The Australian Financial Review this week. “The world of bitcoin has changed since the last run, and my gut feel is this dominated by more corporate activity and institutions.”

ASX confirms to the Committee that we are closely monitoring developments in bitcoin and other cryptocurrencies. We are proud of the high standards we require of listings and quoted products to maintain the quality and integrity that investors and issuers expect from ASX. Therefore, any product that lists on ASX will have to meet a high benchmark.

The article also stated: “But Ms Armour [an ASIC Commissioner] said a fund manager was able to create a managed investment scheme linked to bitcoin, so long as the market on which it would be listed had proper rules. The ASX has so-called AQUA rules that govern exchange traded funds, but the NSX does not.”

These comments are accurate. Both ASX and ASIC have indicated that they come to this with open-minds, but that any product would need to enter the market within a robust framework such as ASX’s AQUA rules for ETFs. As part of that process, both ASX and ASIC would need to be satisfied that the product was suitable for retail investors.

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