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Market Conduct Division
The Treasury
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by email: ESSreforms@Treasury.gov.au

4 February 2022

KPMG submission: Exposure Draft legislation released on 20 December 2021 to amend the *Corporations Act 2001* in relation to employee share schemes

Dear Directors

KPMG in Australia (**KPMG**) appreciates the opportunity to provide a submission to Treasury on the draft inserts for the Treasury Laws Amendment (Measures for Consultation) Bill 2022: Employee Share Schemes released on 20 December 2021 (**Draft Bill**).

KPMG is supportive of the proposed reforms, having previously provided submissions on these issues and believes the reforms will make it easier for businesses – particularly unlisted companies – to offer employee share schemes in Australia.

KPMG's comments on the Draft Bill are set out in the Annexure. While technical in nature, these comments are intended to ensure that the legislation is harmonised and workable for businesses, while remaining consistent with underlying policy.

Please do not hesitate to contact us if have any questions or would like to discuss this submission.

Yours sincerely

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Annexure

KPMG submission in response to exposure draft legislation providing regulatory relief for employee share schemes

1. Consequential amendment to definition of 'employee share buy-back'

It is proposed that the existing definition of an 'employee share scheme buy-back' in section 9 of the *Corporations Act 2001* will be replaced with the new defined term 'employee share buy-back'.

The proposed definition of 'employee share buy-back' covers "a buy-back under a scheme that:

- (a) has as its purpose the acquisition of shares in a company by, or on behalf of:
 - (i) employees of the company, or of a related body corporate; or
 - (ii) directors of the company, or a related body corporate, who hold a salaried employment or office in the company or in a related body corporate; and
- (b) has been approved by the company in general meeting."

In other words, the definition is limited to employees and salaried directors (and does not cover non-executive directors or independent contractors). We submit that this definition should be amended to cover 'ESS participants' in line with other provisions of the Draft Bill including the definition of an 'employee share scheme' under section 1100M, and do not believe that this should raise any policy concerns.

2. Calculation of monetary cap for offers by unlisted bodies corporate

Subsection 1100X(4) of the Draft Bill prescribes the amounts to be included and excluded when calculating the monetary cap under section 1100X. Paragraph (a) of that subsection states that "amounts payable under any related contribution plan" should be included in calculating the cap.

Given the introduction of an 'ESS contribution plan' as a new defined term under the Draft Bill, being a separate concept to a 'contribution plan', is it intended that amounts payable under any related 'ESS contribution plan' should also be included in paragraph (a) of subsection 1100X(4)?

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