Law Council
OF AUSTRALIA

Business Law Section

26 August 2026

Australian Securities and Investments Commission
GPO Box 9827
MELBOURNE VIC 3001

By email: market.consultation@asic.gov.au

Dear Sir/Madam,

Consultation on proposed updates to Regulatory Guide 264

1. The Corporations Committee (in consultation with the Financial Services Committee) of the Business Law Section of the Law Council of Australia (the **Committee**) welcomes the opportunity to respond to the Australian Securities and Investments Commission (**ASIC**) consultation on the proposed update to *Regulatory Guide 264: Sell-side research* (the **Draft Guidance**).

2. This submission is structured in four parts. Part A sets out the key benefits of the proposed updates, which the Committee broadly supports. Part B identifies areas where the Committee believes that further reform is important to ASIC's objective of supporting capital raisings in the Australian market, drawing on practical market experience with initial public offering (**IPO**) processes and having regard to observed practices and feedback from market participants under the existing framework. Part C addresses other areas where the Draft Guidance would benefit from revisions. Part D of the submission then responds directly to each of the specific matters on which ASIC has invited feedback, including the two issues where ASIC is not proposing to change the underlying principles.

Summary: Further reform required to help enhance the IPO market

3. As a general statement, the Committee broadly supports ASIC's initiative in updating *Regulatory Guide 264: Sell-side research* (**existing RG 264**). The transition to shorter, principles-based guidance that maintains expectations about a robust control framework for managing inside information, conflicts of interest and analyst independence is welcome. In adopting this guidance, ASIC has achieved its simplification objective. However, in the Committee's view the Draft Guidance does not sufficiently address the broader objective of taking steps towards enlivening the IPO market. This is because the investor education report (**IER**) content requirements that ASIC has proposed to retain, including the restrictions on valuation methodology

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and IER content, limit the usefulness of the IER by constraining the independent analysis, judgment and insights of the research analyst.

4. This submission advocates for further reform with respect to the content of IERs. In doing so, the Committee encourages ASIC to embrace the Australian Government's July 2026 Statement of Expectations for ASIC, which places a renewed emphasis on promoting economic growth, unlocking productivity, and reducing the regulatory burden. By further transitioning away from prescriptive valuation methodologies and content restrictions to a more flexible, principles-based approach to these matters, the Committee believes that ASIC may further contribute to fostering a more dynamic and competitive capital market.

5. The flexibility that the Committee asks ASIC to consider is in alignment with the government's mandate for ASIC to implement proportionate, risk-based regulation that encourages market participation and investment, particularly in the IPO sector, while maintaining robust core safeguards for market integrity and investor protection. In addition, the changes that the Committee recommends would more closely align Australia's sell-side research guidelines with sophisticated international hubs like Hong Kong and the United Kingdom, helping to reduce compliance friction and market fragmentation, by enhancing the utility of analyst investor education. This should ultimately help drive capital formation in the domestic market.

6. The Committee's submissions below should not be read as detracting from its overall support for the initiative, and the Committee would welcome the opportunity to engage further before the guidance is finalised.

7. For additional clarity, the Committee recommends the incorporation of an express statement into the Draft Guidance that it supersedes the existing RG 264.

Part A: Key benefits of the proposed updates

Transition to principles-based guidance

8. The Committee supports the simplification of the existing RG 264, including the reduction of the guidance from 42 pages to 10 pages.

9. The Committee particularly welcomes the removal of the rigid and artificial capital-raising "stages" (previously categorised as "pre-solicitation", "pitching" and "post-mandate"). Those stages did not reflect the practical, iterative nature of capital-raising transactions and their removal should help reduce uncertainty and compliance friction without diminishing investor protection.

10. As these stages did not always naturally align with the actual events in a capital raising process, their application to an IPO resulted in an increase in administrative burden, particularly for the compliance or other control functions of a licensee. This was particularly challenging for financial institutions that operate "control rooms" that help manage transactions across a range of jurisdictions. The systems that support this control function have been designed to capture stages such as pre-mandate, receipt of inside information and announcement. The administrative burden extended to monitoring the deal stages, recording them in systems, and circulating guidance for each transaction. They also created practical assessment difficulties between pre-

solicitation and pitching due to overlapping language, which ultimately led to complexity and regulatory risk.

Maintenance of core protections

11. As noted above, the Committee strongly supports the retention of the Draft Guidance to help promote appropriate standards for managing conflicts of interest, handling inside information and ensuring research analyst independence.

12. It is critical to the promotion and maintenance of market integrity that ASIC sets clear regulatory expectations, including for Australian Financial Services Licensees (**licensees**) and issuers, about the need to maintain research analyst independence.

13. Preserving these core protections within a principles-based framework strikes an appropriate balance between flexibility and market integrity.

Improved interaction between research analysts, corporate advisory teams and issuers

14. The Draft Guidance improves the ability of research analysts to contribute to a capital raising process without compromising their independence.

15. This improvement specifically relates to the following:

    (a) The express acknowledgement that research analysts may participate in multiple corporate briefings to assist in producing the IER, as opposed to a single briefing. Permitting greater analyst interaction reflects the depth of due diligence undertaken in practice. The due diligence necessary to prepare an IER is typically iterative. In circumstances where issuers have complex financial and accounting arrangements (as well as business structures) a number of meetings may be required. The proposal to allow multiple briefings also better aligns Australia with jurisdictions such as Hong Kong, where there has been greater recognition of the time commitment and complexity involved in preparing an IER, supported by a regulatory regime that permits a number of analyst briefings, Q&A sessions and, where needed, site visits or other additional meetings for due diligence purposes.

    (b) Corporate advisory teams being permitted to engage with research analysts on material due diligence issues and underwriting decisions. It is important to a licensee's decision making and approval processes to have the benefit of the research analyst's views on the issuer, its viability as a listed entity, risks, its financial information and education about valuation methodologies usually employed for entities in the issuing entity's sector (but not a discussion of the analyst's proposed valuation view for the issuing entity). The Committee believes that this will contribute to better management of risk and disclosure, ultimately benefiting investors and the market.

    (c) Acknowledging the appropriateness of analyst participation in underwriting or commitments committees with appropriate controls to ensure research analysts are not subject to inappropriate pressure. This is similarly beneficial, as an independent research view can be critical to a lead manager's risk judgement, helping inform risk disclosures and areas of due diligence focus.

Part B: Key areas for further reform – enhancing the utility of analyst investor education

16. The Committee focuses its feedback on three principal areas in which it considers targeted reform is necessary:

    (a) removing the prescription surrounding valuation methodology, so that analysts may select and clearly explain the valuation basis that they consider most appropriate to the issuer and its industry;

    (b) allowing the analyst to draw on information sources beyond the prospectus (including to remove the constraints on the preparation of analyst forecasts and the limitation on information that may be used for the preparation of a valuation), with a view to enabling genuinely independent analysis supported by transparently disclosed sources and assumptions; and

    (c) permitting greater engagement between the research analyst and the corporate advisory team following the appointment of the licensee to the IPO, subject to appropriate chaperoning, record-keeping and supervision.

17. In the Committee's view, the utility of IERs as part of the IPO process is unlikely to meaningfully improve unless ASIC takes substantive steps to reform each of these three areas. Incremental or partial change is unlikely to be sufficient. It is the combined effect of the current prescriptions across valuation, information sources and corporate engagement that constrains the quality of analyst investor education and, in the view of the Committee, diminishes its value to the market.

18. In identifying these areas for reform, the Committee has drawn on Hong Kong and the United Kingdom as being relevant comparable jurisdictions for this comparative analysis. The reason for selecting these jurisdictions is because they both adopt a principles-based approach similar to the one now being adopted by ASIC. In the Committee's view, Hong Kong is particularly relevant. This is because it is a leading regional listing venue with a deep and active IPO market. This makes it a relevant benchmark. The approach adopted in Hong Kong also helps demonstrate that a less prescriptive approach is workable in a sophisticated market operating in a similar time zone and with a comparable investor ecosystem. Accordingly, to assist with ASIC's analysis, the Committee has included in **Appendix 1** a summary of relevant aspects of the analyst investor education process associated with an IPO in Hong Kong.

19. In terms of the three principal areas of focus, the Committee makes the following recommendations:

Remove the prescriptive valuation methodology limiting the analyst's independent discretion

20. The Committee notes that ASIC appears to have retained the requirement that valuations in IERs must be expressed as an "*enterprise value or total value*" (item 3 of Table 1). This is the same requirement specified in the existing RG 264. The retention of this requirement may continue to constrain research analysts in their utilisation of other valuation methodologies that may be more relevant for a specific issuer. This includes price-based methodologies (such as price-to-earnings and

price-to-book ratios). It also appears to restrict the use of a discounted cash flow methodology (**DCF**) and sum of the parts methodology. This is further compounded by the fact that ASIC suggests that the valuation information must be based solely on the financial information in the prospectus.

21. The Committee believes that the prescription associated with valuation information limits the deployment of analysts' expertise and independent judgement to determine the most appropriate methodology to value a business. It arguably contradicts ASIC's view that IERs are to "*reflect the independent view and expertise of the research analyst*" (item 3 of Table 1).

22. The valuation methodology recommended by ASIC may not be appropriate for all sectors, asset classes or transaction types. In limiting the content of IERs in this manner, ASIC potentially detracts from its objective of supporting healthy IPO markets, especially in those sectors where enterprise value is not an appropriate metric. For example, financial institutions are more traditionally valued on a price-to-earnings (P/E) multiple, and companies whose valuations are heavily dependent on future earnings, such as high-growth technology firms or biotechnology companies, may be valued on multi-stage DCF models. In addition, peer analysis, where a trading multiple is based on a set of listed peers is a valuable valuation cross-check, particularly for those entities with a readily comparable peer group, but because it produces a valuation range that may allow for the back solving of an equity value, may be prohibited.

23. Furthermore, as ASIC is aware, a DCF model requires inputs beyond the prospectus forecast period. ASIC has previously indicated to the Australian Financial Markets Association (in a meeting on 13 March 2018) that it would not view a DCF as impermissible, but this does not appear to be compatible with the Draft Guidance. In fact, the Draft Guidance provides as a consideration that "*any valuation information in the IER will be…based on the financial information in the prospectus*" (item 3 of Table 1) which appears to contradict this position.

24. By requiring analysts to rely on a single, prescribed valuation methodology during the IPO process, the Draft Guidance may create an inconsistency with the established methodologies used to value comparable industry peers (thus limiting the value and utility of the IER) as well as the valuation methodology the analyst intends to use upon initiation post-IPO.

25. By contrast, jurisdictions such as Hong Kong and the United Kingdom do not prescribe a specific methodology, allowing analysts to educate investors as to the valuation methodology they believe to be most appropriate, including by adopting valuation methodologies in line with standard practice for similar companies and the issuer's fundamentals.

26. Allowing analysts this flexibility would also be more consistent with the move towards a principles-based framework. Under such a framework, research analysts should be permitted to select and clearly explain the valuation basis that is most appropriate to the issuer and the industry, supported by transparent disclosure of methodology and assumptions.

27. The direct impact of this limitation reflects on the quality of the analysis that research analysts may produce as part of the IER. In this respect, the Committee notes the

recent market commentary in the *Australian Financial Review* where it was noted that "*investors miss these [IER] reports, but the truth is they'd become so bland and there's now so many third-party information sources available that they can live without them*."[1] In adhering to this rigid safeguard, brokers, institutions and other professional investors are arguably being deprived of the opportunity to provide a genuine and independent view on the appropriate valuation methodology.

28. Although we only have limited examples given the low volume of IPOs in the market at the moment, we note that the IPOs of FDC, Virgin Australia, Gemlife, Guzman-y-Gomez and DigiCo Infrastructure all involved structures that did not utilise an IER. We believe that the limitation on the valuation methodology, as well as the limitation on the content that may be used by research analysts in preparing the IER (refer to paragraph 23 above and paragraphs 33 to 46 below) has a negative impact on the utility of their work-product. Executing IPOs without an IER risks missing important demand (including foreign capital) from international investors who are used to taking into account analyst views, which may reduce investor appetite and limit register diversification.

29. Importantly, the abovementioned valuation methodologies are used to produce a relative valuation. This is different to a per-share valuation, or price or fair value target, which should not be permitted (and the Committee is not aware of any jurisdictions in which a per-share valuation or price or fair value target are included in the IER content, including Hong Kong and the United Kingdom). Furthermore, neither the output from the application of the abovementioned methodologies, nor the IER itself, is intended to form the basis of an investment decision or to predict the price of shares in an IPO or a company's market capitalisation at listing. The IER is educational material for investors that provides an analyst's long-term holistic view of the issuer and assists in the efficient functioning of the IPO marketplace. In fact, the IER would not discuss the IPO or the prospective listing, nor contain a per share analysis.

30. Any commitment to subscribe for, or acquire, shares under the IPO is only made by the investor after the pathfinder prospectus (in a "front-end" IPO) or final prospectus (in a "back-end" IPO) is accessible by the investor. Any investment decision is explicitly linked to the relevant disclosure document. The fact that IERs are generally limited to brokers, professional and institutional investors, and not retail investors, also assists in mitigating the risk that the IER is relied on for an investment decision. The focus on the prospectus as the primary investment text is also supported by separation of investor education from the management roadshow.

31. Instead of restricting the valuation methodology, the market would be better served by allowing analysts to select an appropriate methodology based on their skill and expertise in the context of the issuer and industry which is the subject of the IPO. Consistent with the broader principles-based approach, ASIC could emphasise that analysts should provide transparent disclosures about their valuation methodology, key assumptions and sources, explaining why the methodology is appropriate. This could be supplemented by appropriate supervisory review of the IER and record-keeping. If ASIC believed that further safeguards were required, ASIC could state that the valuation should be provided in a range (without indicating a mid-point in the

[1] Anthony Macdonald, Chanticleer, *Australian Financial Review*, (online, 23 July 2026) <https://www.afr.com/chanticleer/asic-s-diet-rulebook-leaves-equity-analysts-out-in-the-cold-20260722-p60heu>

valuation) and not a precise valuation and that the IER should not contain an explicit recommendation, nor a price target or per share valuation – these safeguards are consistent with how valuation ranges are presented in Hong Kong and the United Kingdom.

32. The Committee submits that the limitation on analyst valuation methodology, and financial information content that may be used to support a valuation, should be removed from the Draft Guidance, allowing analysts to put forward an independent view based on their expertise, the entity's operations and sector.

Allow the IER to incorporate a wider range of content than just the information contained (or likely to be set out) in the prospectus

33. ASIC appears to maintain that the IER should be limited to information disclosed (or expected to be disclosed) in the prospectus. Similarly, the draft guidance expressly provides that licensees should consider implementing a policy so that valuation information may only be '*based on the financial information in the prospectus*.'

34. The Committee submits that this restrictive wording limits an analyst's ability to express genuinely independent views, including by incorporating information from the issuer (beyond that contained in the prospectus, but which would not be considered to be material non-public information), as well as information from publicly available sources.

35. Because an IPO issuer is not yet listed, publicly available financial information is generally limited, and confining the analyst rigidly to prospectus content, as opposed to allowing them access to broader information that may be available from the issuer, its suppliers, customers, or otherwise is in tension with the objective of analyst independence that is the core concern of the guidance. The ability of a research analyst to access additional information from the issuer and other sources is important as part of the research analyst's due diligence in forming their own independent view and ability to effectively educate the market. Simply because an analyst may look to access additional information to help formulate his or her view does not mean that the information is itself material for the purposes of meeting the prospectus disclosure test.

36. In addition, the draft guidance does not expressly acknowledge that information that is publicly available, including via third party data providers, may be included in the IER. By way of example, a research analyst may seek to include industry data or forecasts that are sourced independently from the issuer. There should be no in principle objection to research analysts doing so, provided that the source of the information is appropriately disclosed. It would be helpful in the Draft Guidance could clarify this point.

37. The broader, and more significant, impact of this restriction is that forecast periods are constrained to those periods contained in the prospectus. In the Committee's view, research services are best utilised where forecasts can be provided for the period nominated by the research analyst, which may extend to a period that is longer than that contained in the prospectus. For example, for certain issuers (for example, pre-revenue entities, those with stable cash flows, or businesses that require a longer period to monetise) the research analyst may wish to include a longer forecast period.

38. The requirement in the Draft Guidance that valuation information is to be based on financial information contained in the prospectus also operates to preclude the inclusion of a DCF model, given that projections used to substantiate the DCF model go out further, as has been noted in paragraph 23 (above).

39. The Committee understands that ASIC is concerned that forecasts beyond the prospectus forecast period may be less reliable and, accordingly, lack "reasonable grounds". However, an analyst typically deals with this issue by ensuring that they are subject to appropriate qualifications and assumptions, as well as cautionary language concerning the nature of any such forecast. It is also typically made clear in the IER that, in such circumstances, the opinion, estimate, forecast or project is exclusively that of the analyst and does not reflect the views of the issuer.

40. Removing this limitation in the Draft Guidance does not mean that the IER should be any less reliable. The risk of releasing information that is uncertain or unreliable should already be managed under the existing law, because the research analyst (and associated licensee) is still required to ensure that the content of the IER is not misleading or deceptive (or likely to mislead or deceive) (see s 1041H of the *Corporations Act 2001* (Cth)) and that any representation with respect to a future matter is based on reasonable grounds (see s 769C of the Corporations Act). In fact, this does not appear to be different to the risk that already exists with respect to ordinary course research on a listed stock.

41. It also does not detract from the fact that the issuer must ensure that any information provided to the research analyst that would satisfy the prospectus disclosure test in section 710 of the *C*orporations Act is included in the prospectus. This is similar to the Hong Kong regime.

42. The Committee also understands that ASIC may be concerned that allowing the research analyst to reference a broader range of information from the issuer and other sources may mean that there is differential disclosure between clients of those corporate advisory firms working on the IPO and others in the market, including retail investors, that may not obtain access to IER. We do not believe that this is the case. The IER is not provided for the purpose of recipients making an investment decision. We note that it is different in nature to ordinary course research for a listed entity, as it also does not contain a price target or rating or recommendation. In addition, the prospectus content requirements, including those set out in section 710 of the Corporations Act, prescribe the information that needs to be provided to investors. In general terms, the prospectus must contain all information that is reasonably necessary for investors and their professional advisers to make an informed investment decision. Finally, the information that is provided to brokers, institutional and other professional investors as part of investor education is reflected in the feedback that is provided by those parties to the corporate advisory team and the issuer during the price setting process. As a general matter, all investors participating in the IPO arguably derive the benefit of the IER - albeit indirectly - from the feedback generated by the investor education process that forms part of IPO price setting.

43. The other problem with constraining research analysts to information in the prospectus forecast period is that the issuer may seek to limit the forecast period for liability reasons. The issuer's liability on the prospectus is *per se* which means that the issuer may be reluctant to include a longer forecast period, instead opting for a more conservative approach. The issue is also compounded with cross-border

offerings, where an issuer may be domiciled in another jurisdiction but seeking an ASX listing. This is because that jurisdiction may have different liability regimes associated with forecast information that means that it is not included in the prospectus. By way of example, this is the case in Hong Kong, where the prospectus is not required to include a forecast (and accordingly, where is not customary to include one). By adopting this requirement, the research analyst is beholden to the issuer in relation to the forecast period, without the ability to exercise their own expertise and discretion. This is arguably the opposite outcome to the one that ASIC is seeking to achieve, that is, the promotion of the exercise of independent judgement by the research analyst.

44. Adopting a more flexible approach to forecast horizons would also more readily align Australian standards with jurisdictions such as Hong Kong and the United Kingdom. In these jurisdictions it would be typical for analysts to include forecasts that extend up to three years (and potentially up to five years) depending on the nature of the issuer's business, with discretion for an analyst to extend beyond for high-growth or long-duration businesses if doing so would be consistent with a firm's internal policies. This flexibility is highly beneficial for potential investors, as it ensures the forecast period directly supports the analyst's underlying valuation methodology.

45. In summary, to require the research analyst to adhere strictly to the content of the prospectus mistakes the nature of the IER. It is not intended to provide the basis of an investment decision but is broadly designed to educate brokers, institutional and other professional investors about the sector and the long term outlook of the issuer based on the analyst's expertise and judgement which are independent of the issuer.

46. The Committee submits that research analysts should be permitted to form and express independent views in the IER (including an appropriate forecast period), without being constrained by prospectus content, provided the sources and bases for those views are clearly disclosed and accompanied by appropriate cautionary language.

Further enhance the ability of the research analyst and corporate advisory team to more readily interact post IPO appointment, subject to appropriate safeguards

47. ASIC retains significant restrictions on corporate advisory teams engaging with research analysts once the licensee is appointed to the IPO, until the IER is "widely released".

48. Other than in the case of material due diligence issues and underwriting decisions, these restrictions operate across the full life cycle of the investor education process and include prohibitions or limitations on the corporate advisory team:

    (a) briefing the analyst;

    (b) engaging in fact-checking; and

    (c) receiving a copy of the IER immediately prior to its distribution as part of the launch of the investor education process.

49. The ability of the corporate advisory team to brief the research analyst on factual information as part of the initial briefing following appointment, including company

background, providing draft prospectus extracts and other factual business information to assist with the analyst's due diligence, provides a valuable source of information to the analyst to help them prepare the IER. Given accelerated timetables and short issuance windows, the ability to engage in these discussions at the outset and also throughout the IPO preparation process is important to the quality of the analyst's due diligence and ultimately the content of the IER. Equally, observations from the research analyst about likely areas of focus or lines of inquiry, may assist the corporate advisory team in addressing potential areas of risk or investor focus.

50. In a number of other markets, including Hong Kong and the United Kingdom, it is permissible for the corporate advisory team to brief the research analyst after being engaged, including providing company background, prospectus extracts and additional business information, and allowing the research analyst to ask questions. The ability to engage on these topics is also permitted on an ongoing basis throughout IPO due diligence and prospectus drafting up until publication of the IER.

51. In practice, particularly under accelerated transaction timetables and short issuance windows, research analysts frequently require factual clarifications regarding the draft prospectus, the issuer's business model, or complex financial arrangements. Allowing analysts to seek these clarifications directly from the corporate advisory team rather than solely from the issuer or external legal counsel provides an efficient and practical path that reduces administrative friction for the issuer's management team. Similarly, where material updates to corporate information or draft prospectus disclosures arise during the preparation phase, the corporate advisory team should be permitted to pass these factual updates to the research analyst to ensure the accuracy and currency of the draft IER. To manage potential conflicts of interest and preserve analyst independence, these ongoing interactions can be subject to internal controls, including compliance intermediation and a clear prohibition on the corporate advisory team expressing any views on valuation or seeking to influence the analyst's independent conclusions.

52. In addition, the corporate advisory team has a valuable role to perform in connection with fact-checking of the IER. The corporate advisory team devotes significant time to the structured due diligence committee process and often hold the most up-to-date factual information about the issuer that has been included in the draft prospectus (given the role that they perform in assisting with drafting of the company overview and similar sections). This is particularly important as the draft prospectus gets closer to finalisation with multiple edits being made by a range of stakeholders, including adjustments to key financial metrics. Analysts are not immune from errors, and it may be insufficient for them to liaise only with the issuer to confirm factual questions as the issuer may not have the time or capacity to address all questions raised by syndicate analysts in a timely manner. Excluding the corporate advisory team from the fact-checking process increases the risk that the analysts may make factual errors in the IER, particularly under increasingly accelerated IPO timetables and short issuance windows.

53. In Hong Kong and the United Kingdom, the corporate advisory team may provide factual comments on the draft investor education material. Valuation information is redacted during the review process to mitigate the risk of pressure or non-factual comments. The review process is facilitated by external counsel who receive the draft investor education material, arrange for review by the issuer and the corporate advisory team and provide consolidated comments back to the research analysts.

The provision of factual comments may be intermediated internally by compliance or another control function and firms have policies in-place to prevent inappropriate influence. Additionally, fact-checking is typically limited to two rounds in order to mitigate the risk of undue pressure being applied. A third round may be permitted in the event that new information is provided by the issuer (such as the release of financial results).

54. The Committee is also of the view that permitting the corporate advisory team to receive a final copy of the IER with unredacted valuation information after it has been reviewed and approved by the research investment or similar research oversight committee, but prior to launch of the investor education process, would be helpful to the IPO process. Allowing the corporate advisory team to review the IER before distribution to investors serves as a quality-control mechanism to identify any factual inaccuracies that may underpin the valuation view and any major valuation misalignments with the issuer that may cause the issuer to alter or change the decision to move forward with the IPO. The risk of analyst pressure could be mitigated in a similar manner to that adopted in Hong Kong and the United Kingdom, including by requiring intermediation only through compliance or another control function, and requiring a transparent audit trail to identify and explain any post-review changes, in order to ensure analyst independence is preserved.

55. In summary, the Committee believes that the risk of inappropriate influence by the corporate advisory team across each of these areas of engagement is capable of being managed. This may involve the setting of clear guardrails through clear policies, the intermediation of the compliance team, another control function and/or legal advisers, and, in the case of receipt of IER by the corporate advisory team prior to launch, restricting engagement to the period after research investment committee review.

56. The Committee submits that limited, controlled and documented corporate advisory engagement should be permitted post-mandate, comprising: (i) an initial factual briefing of the analyst and clarifications throughout the due diligence and IPO prospectus preparation process (beyond just material due diligence items); (ii) factual verification of draft IER; and (iii) receipt of a copy of the IER after review and approval by the research investment committee and prior to launch — in each case subject to valuation redaction where appropriate (i.e. prior to the IER having been reviewed and approved by the research investment or similar research oversight committee), chaperoning, appropriate record-keeping and supervision.

Part C: Other areas of feedback

57. In addition to the matters addressed above, the Committee raises five further points which, while discrete, are important to the practical and principled operation of the updated guidance. Each is consistent with the principles-based guidance that the Committee otherwise supports, and the Committee believes that each can be accommodated without diminishing analyst independence, the management of conflicts of interest, or the primacy of the prospectus.

A delayed pathfinder or prospectus following an IER should not undermine the key role of the disclosure document.

58. ASIC notes that it is important that the key role of the disclosure document is not undermined by a material time gap between the release of the IER and the pathfinder or final prospectus.

59. The Committee does not believe that the primacy of the prospectus is undermined in circumstances where there is a gap between the release of the IER and the pathfinder or final prospectus, irrespective of whether that gap is planned or unplanned. The concern that a timing gap erodes the primacy of the prospectus does not, in the Committee's view, reflect the purpose of investor education (which is discussed above), the way in which the IER is practically released or the point in the process at which investment decisions are actually made.

60. In support of this view it is noted that the audience of the IER does not typically include retail investors. Instead, the IER is typically provided to brokers, institutional and other professional investors who are well placed to appreciate the nature of an IER as part of overall investor education.

61. Nor are investors asked to commit to participate in the IPO until they have received a copy of the pathfinder or final prospectus. This means that they are able to base their investment decision on the content of the disclosure document and not the IER. Accordingly, because the investment decision is made on the basis of the disclosure document, any gap in release is of less relevance to the protection of investors and does not undermine the key role of the pathfinder or final prospectus. In fact, the opposite is true. It is arguably incrementally beneficial where there is a gap (even where this is short) between the publication of the IER and making of the final investment decision on the basis of the disclosure document in order to more clearly delineate the investor education process from the investment decision.

62. In addition, timing is often driven by factors outside the control of the parties. A gap between the IER and the pathfinder or final prospectus may arise for planned or unplanned reasons, including market conditions and the iterative nature of the transaction process. This is relevant because the IER is designed to facilitate investor education, which also results in a constructive feedback loop for the corporate advisory team and the issuer. To the extent that the feedback from investor education prompts consideration of additional risks associated with the transaction, its structure or other considerations (such as, for example, escrow arrangements), then this may result in changes to the disclosure document and the timetable. Such a change should not create additional regulatory risk but should be treated as an important part of the overall IPO preparation process. Treating such a gap as inherently problematic imposes friction without a commensurate protective benefit.

63. The Committee submits that the Draft Guidance should not indicate a preference for the release of the pathfinder without any “material time gaps” following the release of the IER. Instead, the issuer and the corporate advisory team should be permitted to decide the appropriate timing for release of the disclosure document, having regard to the circumstances of the particular transaction. This approach is consistent with the principles-based framework that ASIC is otherwise adopting and appropriately recognises that the investment decision is anchored to the pathfinder prospectus or final prospectus rather than the IER.

The Draft Guidance should better recognise the right of compliance and other control functions to access research information (e.g., analyst models)

64. The Committee notes that in preparing the principles-based guidance, ASIC has limited some of the important permissions to disclosure of draft research and other research analyst work product. In particular, as currently drafted, ASIC has expressed the view that licensees consider "*procedures to ensure drafts of IERs, including research analyst models and working files, are not shared outside research until the IER has been widely released*" (item 3 of Table 1). In addition, ASIC notes that licensees should consider "*procedures to ensure unpublished research or changes to recommendations (including IERs) are [to be] restricted to the research team…*" (item 5 of Table 1).

65. The Draft Guidance does not consistently acknowledge that it may be necessary for the research analyst to disclose their model, financial projections and underlying assumptions and unpublished research to the firm's compliance team or other control function for the purposes of supervision, review and approval.

66. Such disclosure is a control and should not be considered a conflict. It is a mechanism by which licensees seek to satisfy the very independence and conflict-management obligations that the Draft Guidance is concerned with.

67. The Committee submits it would assist for the guidance to confirm expressly that it is permissible for drafts of IERs, including research analyst model and working files, to be provided to compliance or another control function, in connection with compliance and supervisory obligations.

Dispense with the head of corporate advisory declaration and enhance the process by which the analyst declaration may be made

68. ASIC has introduced a new requirement into the Draft Guidance that highlights that a licensee "may consider requiring the head of corporate advisory to provide an annual declaration to compliance that they, or members of the corporate advisory team (after making reasonable enquiries) have not sought to influence the research team" (item 2 of Table 1).

69. The Committee notes that it is unclear whether this new declaration is intended to be a minimum requirement and whether the head of corporate advisory would need to be a representative of the licensee to make the declaration.

70. The Committee submits that the research analyst is best placed to attest to the independence of their own views, the basis on which those views were formed, and whether any attempt was made to inappropriately influence the content of their research. This accords with the consideration that licensees implement a requirement that research analysts "provide a declaration…confirming that…no other parts of your business or the issuing company have made any attempt to influence the research."

71. A research analyst-focused attestation is therefore both more meaningful and more directly aligned with the objective of research independence. By contrast, requiring a head of corporate advisory to attest to matters that are properly within the analyst's knowledge and control is of limited protective value and adds burden without a commensurate benefit, particularly in circumstances where the corporate advisory team is separated from the research team by way of properly established and documented internal information barriers.

72. Having said this, the Committee believes that it is important for the sake of efficiency, if the research analyst's declaration may be made into a tracking system, such as through an "e-task" or electronic task system, that automates and manages tasks, and accessible by a licensee's compliance or other control function (as opposed to being provided to that compliance or control function).

73. The Committee submits that ASIC should dispense with the declaration by a head of corporate advisory and rely instead on the existing analyst declaration. However, in order to facilitate a systems-based declaration, the Draft Guidance should reflect that the analyst's declaration need only be accessible by, and not necessarily provided to, a member of compliance or another control function.

Clarify the importance of guarding against tipping in relation to a model request and the process for requesting models

74. The Committee notes that ASIC has revised its guidance concerning the process for requesting research analyst models to deal with the risk that the model communicates inside information. This is an important consideration, but equally, the request for a research analyst may also of itself constitute a tipping risk. This was made clear in paragraph RG 264.57 in the existing RG 264.

75. For example, a request for model-related information can create a risk that the recipient of the request infers the existence of an underlying price-sensitive transaction.

76. The Committee has also identified that ASIC's guidance requires that any request for a research analyst model must be managed by the licensee's compliance team. This is likely to create a meaningful administrative burden, given the frequency of requests for models from investors, corporate clients and public-side equities sales and trading teams (i.e., those operating on the "public side"). In addition, research models for listed entities are made available through client platforms, making them widely available to clients with access to those platforms in the same manner as their published research.

77. The existing RG 264 explained that the compliance intermediation should apply where the request is from the corporate advisory team or others on the "private side", as opposed to those on the public side, such as equities sales and trading teams.

78. It would assist licensees if a similar requirement was reflected in the Draft Guidance. The risk of tipping is mitigated both in the context of a model that is already widely available and having regard to the nature or identity of the person or entity making the request.

79. The Committee submits that ASIC should recognise in the Draft Guidance that compliance processes should be implemented to address the risk of tipping associated with the request itself, not just the communication of inside information associated with the content of the model. In addition, ASIC should make it clear that the compliance intermediation should only apply in circumstances where a model request is received from the private side (e.g., corporate advisory team) or where a research department does not otherwise make their models widely available in the same manner as their published research.

Distinguishing participation in the pitch from permissible engagement in pitching activities

80. The Draft Guidance prohibits research analysts from participating in the pitch for a capital raising mandate, unless they are wall-crossed. The Committee supports the principle that research analysts must not be involved in the solicitation of corporate advisory mandates and should not attend a pitch to advocate for the award of a mandate. However, the Committee is concerned that, without clearer articulation, the prohibition may be read too narrowly so as to allow analysts to participate in the pitch with the prospective issuer (to help secure a mandate), provided that they are wall-crossed and do not produce research in relation to the transaction or issuer prior to completion of the IPO.

81. Instead, we think that there is an important distinction between participating in or contributing to the pitch itself, that is:

    (a) *participating in:* the analyst being involved in the solicitation of the mandate or commenting on corporate advisory pitch materials or providing their research materials for inclusion in corporate advisory pitchbooks (which should be prohibited); versus

    (b) *contributing to:* engaging with the corporate advisory team in connection with pitching activities, such as participating in internal vetting and transaction approval processes, contributing to internal due diligence, and providing corporate advisory education on the relevant company, sector or peer group (which should be permissible if the analyst is wall-crossed and subject to appropriate controls).

82. The activities described in paragraph 81(b) (above) do not involve the research analyst soliciting the mandate or being held out to the issuer as being part of the pitch. Rather, they reflect the research analyst's proper role in supporting the licensee's own risk assessment, internal governance and the education of corporate advisory personnel. The independence of the research analyst's views is not compromised by contributing to internal vetting or educating corporate advisory personnel, provided the research analyst is not involved in soliciting the mandate and appropriate controls (including intermediation by compliance or a control function and record-keeping) continue to apply.

83. Making this distinction express in the guidance would help remove uncertainty, preserve the core protection against research analysts soliciting mandates (which would rightly be ASIC's concern), and ensure that licensees retain the benefit of independent research analyst input in to transaction processes, including by helping to evaluate risk.

84. The Committee submits that the guidance should be revised to explicitly distinguish between: (a) the research analyst participating in the pitch (that is, actually attending the pitch or helping the corporate advisory team to prepare or providing their research materials for inclusion in the pitch materials), which is prohibited (regardless of whether the research analyst is wall-crossed and does not produce research); and (b) engaging with the corporate advisory team as part of pitching for capital raising transactions, including participating in internal vetting, due diligence and corporate advisory education, which should be permissible. If this distinction is recognised, then it should not be necessary to prohibit the research analyst from preparing research

until completion of the transaction. Such a limitation should only apply if the research analyst shared their valuation views with the corporate advisory team to assist with pitching.

Recognition that indications of interest, trade ideas and market commentary are not sell-side research

85. The definition of "sell-side research" contained in the Draft Guidance at paragraph RG 264.8 remains overly broad. In paragraph (d) of the Draft Guidance, sell-side research includes desk notes, emails and flash notes that contain a price target or valuation about named or readily identifiable financial products (or classes of financial products) and does not reference the most recent broadly distributed research. The Committee acknowledges that the definition used substantially reflects the definition contained in existing RG 264.

86. This broad definition potentially captures a wide variety of day-to-day commercial communications that would not customarily be considered investment research. This includes trade ideas and sales and trading market commentary (**Trading Ideas and Commentary**). These Trading Ideas and Commentary come from sales, trading or market-making desks, with a view to identifying short-term trading opportunities, facilitating client execution and/or promoting market liquidity. They are not the product of the research function of a licensee and would not ordinary be considered as constituting investment research.

87. To comply with the existing RG 264, licensees have had to implement detailed and resource-intensive compliance controls to ensure that daily sales desk communications do not inadvertently cross the threshold into "sell-side research." The Committee is of the view that this administrative burden is disproportionate to the risk being addressed and runs counter to ASIC's objective of simplifying the regulatory framework.

88. The Committee believes that the administrative and compliance burden associated with this broad definition could be resolved by the introduction of an explanatory note that Trading Ideas and Commentary do not constitute sell-side research.

89. The Committee recommends that ASIC clarifies, in the definition of sell-side research contained in the Draft Guidance, that trade ideas and sales and trading market commentary do not constitute sell-side research within the meaning of paragraph RG 264.8 of the Draft Guidance.

Part D: Responses to ASIC's specific requests for feedback

90. A summary of the Committee's responses to ASIC's requests for feedback is set out below. This summary should be read in the context of the more detailed feedback set out in Parts A – C above:

ASIC request for feedback	*Committee response*

Is the proposed guidance sufficiently clear?	Yes, substantially clearer than the existing RG 264. The Committee believes that it provides a more proportionate and flexible approach that will be readily capable of adoption across a more diverse range of financial institutions that participate in capital markets transactions. It achieves ASIC's simplification objective without compromising on the need to ensure that strong controls are in place to protect analyst independence. For the sake of clarification, the Committee recommends that ASIC expressly states in the Draft Guidance that it supersedes the existing RG 264.
Does the proposed guidance reflect industry practice in managing risks associated with sell-side research?	Broadly yes for conflicts, inside information and independence. However, the Committee does not believe that the changes will necessarily result in a more useful research product that can help reinvigorate Australia's IPO activity. The retained content and engagement restrictions, notably with respect to valuation methodology, IER content and the limitation on engagement with the corporate advisory team, do not fully reflect the controlled ways that firms already manage these risks across other jurisdictions. The Committee believe that they operate to hamper the quality and utility of the IER.
Suggested changes or areas for clarification.	The Committee believes that ASIC should remove the prescription surrounding the valuation basis in IERs, allow research analysts to use a broader range of data, including to adopt their own forecast period (that may extend beyond that contained in the prospectus) and permit greater engagement between the analyst and the corporate advisory team, including in relation to providing factual information, fact-checking (excluding valuation information) and to receive a copy of the final draft IER after it has been finalised by research management.

Presentation of valuation information in IERs.	ASIC should consider a more flexible valuation basis, supported by transparent methodology disclosure, independence standards, and supervisory review, to better support IPO activity and attract international demand. This would mean dispensing with the underlying principle that the methodology must be an "*enterprise value or total value for the issuing company*" and allowing for a wider range of financial information to be used to prepare the research analysts valuation views (other than just the information contained in the prospectus).
Fact checking of draft IER by corporate advisory teams.	A narrowly scoped, documented and supervised role in corporate advisory teams verifying objective factual matters would improve accuracy without compromising analyst independence.

Part E: Minor drafting comments

91. The Committee also wishes to provide some minor drafting comments on the content of the Draft Guidance:

    - paragraph RG 264.8(a) makes reference to an issuing company's securities being "listed" - technically it is the company which will be "listed", and its securities will be "quoted" on a financial market;

    - paragraph RG 264.8(d) should end with a semi-colon rather than a full stop (given that it is followed by paragraph RG 264.8(e)); and

    - the first sentence in the third bullet point in item 3 of Table 1 is worded:

      "A policy that research analysts and your corporate advisory team will not communicate from the time the corporate advisory team is appointed to the transaction until the IER has been widely released—except in limited circumstances."

92. We don't believe that ASIC's intention is to prevent research analysts and the corporate advisory team from any communication whatsoever during the relevant period, so this could perhaps be re-worded (new words <u>underlined</u>):

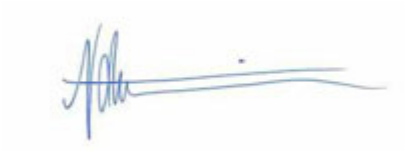
    "A policy that research analysts and your corporate advisory team will not communicate <u>with one another about the capital raising transaction or the issuing entity</u> from the time the corporate advisory team is appointed to the transaction until the IER has been widely released—except in limited circumstances."

Further engagement

93. The Committee would be pleased to discuss any aspect of this submission and would encourage ASIC to engage directly with industry participants, including through roundtables or bilateral discussions, before finalising the updated guidance.

94. Please contact Philippa Stone, Chair of the Committee [redacted] if you would like to discuss this submission with representatives of the Committee.

Yours faithfully,



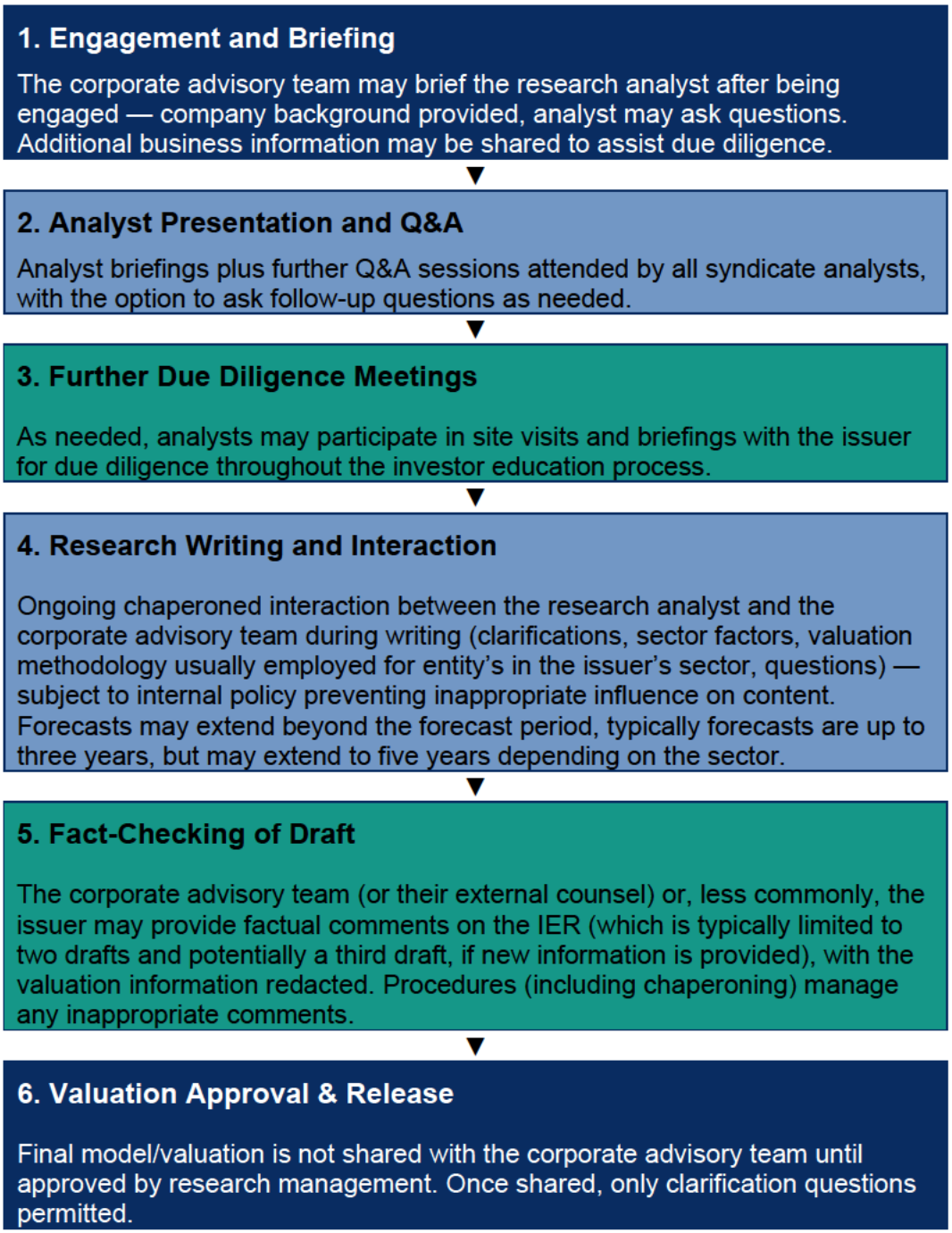
Adrian Varrasso
Chair, Business Law Section

Appendix 1 – Hong Kong investor education research framework

The Hong Kong investor education model is based on high-level principles and objective-based rules, which is similar to the model ASIC is proposing to adopt.

The Committee would argue that it provides more meaningful engagement between the research analyst, the corporate advisory team and the issuer, while managing conflicts through chaperone functions and the continued oversight of research management. The process flow below sets out the key relevant stages and permissible interactions.

Process Flow



How the Process Works

1. Engagement between research and corporate advisory

- The corporate advisory team may brief the analyst about the IPO after being engaged, including on the issuer's background, and allow the analyst to ask questions. In addition, further business information may be provided by the corporate advisory team to assist the analyst with due diligence.

- Ongoing interaction is permitted during the research writing process, but such interactions are chaperoned and subject to established and documented policies, including to restrict the corporate advisory team from inappropriately influencing research content.

- The corporate advisory team and research analysts may discuss clarifications concerning issuer information, the factors the research analyst considers in evaluating the company in the issuer's sector, the valuation methodology usually employed for entities within that sector, and the questions the analyst would want to ask to better understand and evaluate the issuer.

- The corporate advisory team (or their external counsel) and, less commonly, the issuer may engage in fact-checking, which is chaperoned by external legal counsel and compliance, with valuation information redacted.

- The final model and valuation are not shared with the corporate advisory team until it is approved by research management. Once shared, the corporate advisory team may only ask clarification questions.

2. Engagement between research and the issuer

- Multiple research analyst briefings are permitted, plus a Q&A session (attended by all syndicate analysts) with the option to ask follow-up questions as and when needed. These briefings and sessions would be subject to appropriate chaperoning and supervision.

- To the extent needed, research analysts may set up other types of meetings with the company (e.g., to clarify questions or conduct site visits) for due diligence purposes throughout the investor education process (again, subject to appropriate chaperoning and supervision).

- Subsequent appropriately chaperoned interactions with the issuer are permitted to help the research analyst better understand the company and provide a more well-rounded, objective view for investor education purposes.

- Conflicts of interest and prevention of inappropriate pressure are managed through external counsel, equal access to information across the syndicate, chaperone functions, and the continued involvement and oversight of research management.

3. Use of forecasts

- Forecasts and projections may be included in the IER where they are prepared independently by the analyst, subject to the syndicate research guidelines. The ability of the research analyst to prepare independent forecasts and projections is important as there is no regulatory requirement (nor is it customary) for an issuer to include forecasts or projections in the prospectus.

- Typically, forecasts may extend up to 3 years, although depending on the sector it may go up to 5 years. There is no regulatory limit.

4. Information content

- Research analysts are not confined to information only disclosed in the prospectus. It is permissible to have regard to supplementary information from the issuer and the corporate advisory team (subject to chaperoning and controls), as well as publicly available information and broader information (such as that from the issuer's suppliers or customers) to inform their own independent analysis. As a matter of practice and in order to comply with the applicable rules (refer to the final bullet point in this section 4), the issuer would not provide the research analyst with any of its profit forecasts or projections that are not (or not expected to be) disclosed in the prospectus, however, the issuer may provide the research analyst with a qualitative description of the drivers, assumptions and methodologies to support the forecast or projection.

- This enables the research analyst to probe the business and undertake genuine due diligence, with a view to producing an objective view as part of the investor education purposes.

- The ability to obtain supplementary information from the issuer is subject to the requirement that the issuer may only provide the research analyst with (and the research analyst may not ask for) any information that is *material information*, unless it will (or is reasonably expected to) be provided in the prospectus.

5. Valuation information

- Hong Kong does not prescribe a specific valuation methodology.

- Research analysts can follow the relevant methodology in line with standard practice for similar entities and the issuer's fundamentals.

- Valuation information is redacted from any draft shared with the corporate advisory team (or their external counsel) or, less commonly, the issuer for fact-checking, and the final valuation is only shared after approval by research management. Once the valuation is shared with the corporate advisory team, the presumption is that research analyst's valuation views are final. The corporate advisory team may ask clarificatory questions. Any comments from the corporate advisory team on valuation after approval would be communicated to research management or via intermediated interaction through compliance or another control function and any changes must be approved by research management.