

Helen Lofthouse and David Clarke response to Investor letter from 16 April 2025

17 April 2025

Re: ASX response to Investor letter from 16 April 2025

Dear Investors,

Thank you for your considered letter dated 16 April 2025 regarding the ASX Listing Rules and their application as they relate to James Hardie's proposed merger with Azek.

Please be assured that this matter has our full attention and we appreciate the depth of dissatisfaction among James Hardie's shareholders on the way this proposed merger has been structured. We trust this same sentiment has been conveyed to James Hardie's Board and management directly.

Over the past two weeks we've heard directly from a number of investors and proxy advisors on this matter and discussions have been held with us as Chair and CEO of ASX as well as with Daniel Moran, our Chief Compliance Officer (CCO).

We have been listening, and where appropriate we have sought to provide context and information on how our Listing Rules operate. We have done this whilst being mindful of not violating the confidentiality relied on by issuers when they deal with our Listings Compliance function which is headed by Daniel Moran.

As you may be aware, our conflict handling arrangements at ASX mean that authority has been delegated to the Chief Compliance Officer to make decisions about compliance with the Listing Rules. This ensures decisions are made independently and are not directed by anyone within the commercial parts of ASX. We extend confidentiality to listed entities as a core principle of conduct within Listings Compliance and this is because we need listed entities to be open and transparent with us as a market operator. This would be significantly compromised if they were concerned that we would discuss their affairs with others.

Having said that, we know it is important to provide transparency where possible and to that end we asked our CCO to provide more detail on the reasons for the granting of the waiver. Daniel has obtained permission from James Hardie to provide the attached note, which we are using to assist with our response to enquiries.

On the matter of any application by James Hardie to change to a Foreign Exempt Listing, we can only respond in general terms, but we can confirm that the position of our Listings Compliance team is that, if we received an application of that kind, particularly where we were on notice of concerns that had been expressed by shareholders, we would want to hear and understand those concerns and would take them into account in forming our views. In these circumstances, we expect that we would also advise the company that this would be a transparent process, appropriately inclusive of shareholders.

We appreciate that the concerns you raise in the letter go beyond the application of the Listing Rules to the James Hardie transaction. Yours is a concern about the protection of shareholder rights. The Listing Rules are in place to serve the interests of both listed entities and investors, and ASX has a strong interest in ensuring the rights and interests of both groups are appropriately protected. We have a strong interest in consistency and certainty, so that listed entities can transact and conduct their affairs with confidence. But we are always open to considering whether the policy settings underpinning the rules remain fit for purpose. And we welcome feedback on this from stakeholders, including investors.

Finally, we're aware today's response may not have fully addressed every matter raised in your letter and we do expect

to provide further follow up, however, we wanted to ensure you received a prompt and direct reply that demonstrates our desire to address your concerns.

Yours sincerely,

Helen Lofthouse
ASX Managing Director & CEO

David Clarke
ASX Chair

Investor Letter supplied to ASX on 16 April 2025

David Clarke, Chairman,
Helen Lofthouse, CEO &
Daniel Moran, Chief Compliance Officer
ASX Limited
20 Bridge Street
Sydney NSW 2000

Wednesday, 16 April 2025

Dear Mr Clarke, Ms Lofthouse & Mr Moran

ASX Listing Rules

We, the undersigned investors in ASX listed companies, are writing to express our concern about the consequences arising from the application of the ASX Listing Rules, and the exercise of ASX discretion under the Listing Rules, that have been highlighted by the proposed James Hardie – Azek merger.

If the ASX has exercised its discretion to allow the issue of shares under the merger, and allows a change of ASX listing status, the James Hardie – Azek merger will result in a significant dilution of interests for existing James Hardie shareholders and irreversibly change their rights, without any shareholder vote of James Hardie occurring.

We believe this transaction illustrates the following issues with the current ASX Listing Rule regime.

Firstly, in relation to Listing Rule 7.1 (and the exceptions within Listing Rule 7.2), we think that it is unreasonable that ASX listed entities are able to issue a large amount of securities as part of domestic or foreign mergers and acquisitions, without a shareholder vote. The flow-on effect of this type of transaction occurring is that an ASX listed entity is able to significantly dilute and change the existing shareholder base, and (in the case of foreign mergers and acquisitions) take steps to shift the listing jurisdiction, thereby fundamentally altering shareholder rights.

In this respect, ASX should consider aligning itself with best practice in other jurisdictions where securityholders must approve transactions which involve an issuance beyond specified thresholds as part of any transaction. We do not believe there is a compelling rationale for maintaining the current Australian position of allowing an exception for issuances for schemes and foreign takeovers (or, through waiver, equivalent transactions in other jurisdictions) as other jurisdictions which do not allow this exception still maintain competitive public market transaction processes.

As an illustration of the current rules, it would be possible for an ASX listed entity to issue 100% of its existing stock on issue as consideration for an offshore transaction, without a shareholder vote. This is inconsistent with the aim of protecting existing shareholders from excessive dilution and maintaining their ownership rights, which is the clear intention of Listing Rule 7.1.

Secondly, we would encourage the ASX to publish all Listing Rule waivers that were granted to facilitate this transaction. The waiver process should be transparent, and we do not believe there is any reason to maintain confidentiality of these waivers once a transaction has been announced. We believe that ASX's policy should be updated so that all waivers which are material to shareholders, are made public at the time any transaction is announced.

Thirdly, it appears that James Hardie (JHX) has indicated that it now wishes to shift its primary listing to the NYSE after this transaction closes and obtain an ASX Foreign Exempt Listing, with no proposal to put this to a shareholder vote. At close of the proposed James Hardie – Azek transaction, only 26% of James Hardie shares will trade on the NYSE.

A shift of primary listing would result in a permanent alteration of the rights of James Hardie shareholders, as there are clear differences between the listing rules of the ASX and the NYSE which are detrimental to James Hardie shareholders. If James Hardie was successful in applying for a Foreign Exempt Listing under Listing Rule 1.15, the ability of shareholders to hold management and the board accountable for poor performance will be diminished. For example, under NYSE rules, JHX will (amongst other things) be able to issue equity to insiders without shareholder approval, issue stock during takeovers and may be able to introduce dual class shareholdings.

Finally, if JHX is granted Foreign Exempt Listing status, the ASX's Guidance Note 33, Removal Of Entities from the ASX Official List, makes it clear that the ASX will strongly consider approving JHX's delisting from the ASX without shareholder approval.

We would encourage ASX to make shareholder approval a condition of allowing James Hardie to alter its ASX Listing. In 2010, the company's shareholders approved its redomicile to Ireland on the basis that it would maintain its ASX Listing. This is reflected in its Articles of Association. Given this, we do not believe that ASX should apply the policy in Guidance Note 33 of not requiring a shareholder vote on any alteration of its ASX listing status. Instead, ASX should require shareholder approval before this can occur.

We consider that it is an unreasonable consequence of the application of the ASX Listing Rules if the issuance of a minority of an entity's securities trading on a foreign exchange (in this case 26% of JHX shares traded on the NYSE) could be the catalyst for an ASX listed entity to eventually delist from ASX, without any reference to its owners. If this is the outcome from the James Hardie process, this is a clear loophole that warrants immediate attention.

We call on the ASX to openly and transparently set out the criteria that the ASX would use to make a decision about granting a Foreign Exempt Listing to James Hardie or other entities in similar circumstances (especially where the bulk of trading remains on the ASX), and to seek investor feedback prior to making any decision in relation to James Hardie.

More broadly, we consider that this transaction creates an immediate need for the ASX to reconsider the exercise of ASX discretions in these types of circumstances, and refresh ASX guidance and the ASX Listing Rules (in particular Rule 7.1 and the exceptions to it in Rule 7.2), to ensure that ASX can continue to uphold shareholder rights.

These issues create investment risk for shareholders invested in ASX listed companies generally, and we would encourage the ASX to have proper regard to the rights of longstanding investors in these important decisions.

Yours sincerely,

The undersigned

John	Pearce	Chief Investment Officer	Unisuper
Mark	Delaney	Chief Investment Officer	Australian Super
Damian	Graham	Chief Investment Officer	Aware Super
Brett	Chatfield	Chief Investment Officer	C+BUS Super
	Sawtell-		
Sonya	Rickson	Chief Investment Officer	HESTA
Kate	Misic	Acting Chief Investment Officer	Telstra Super
Andrew	Howard	Chief Investment Officer	Equip Super
Kiran	Singh	Acting Chief Investment Officer	Rest
Kerri	Pratt	General Manager Defined Benefits and Liabilities	State Super NSW
Simon	Mawhinney	Chief Investment Officer	Allan Gray Australia
David	Pace	Principal and Portfolio Manager	Greencape Capital
Andrew	Fleming	Deputy Head of Equities	Schroder Investment Management Australia Limited
Paul	Taylor	Head of Investments	Fidelity Australia
Prasad	Patkar	Head of Investments	Platypus Asset Management
Raaz	Bhuyan	Director and Portfolio Manager	Wavestone Capital
Matt	Williams	Head of Australian Equities	Airlie Funds Management
Michael	Bell	CIO	Solaris Investment Management
Michael	Ryan	CEO	Northcape Capital
Troy	Angus	Head of Australian Equities	Paradice Investment Management
Hamish	Carlisle	Principal	Merlon Capital Partners
Paul	Xiradis	Chief Investment Officer	Ausbil Investment Management Limited