

Media Release

27 April 2025

ASX commences review process of Listing Rules related to shareholder approval requirements

Public markets play a critical role in Australia's economy by helping companies grow and giving investors the opportunity to share in that growth. ASX's Listing Rules underpin a key part of this eco-system by providing a fair, orderly and transparent regime for investors and listed entities. ASX's rules and guidance promote a listing environment where both investors and listed companies can have confidence about how we will apply the rules and ASX regularly consults with the market to ensure the Listing Rules remain effective and fit for purpose.

Recently, there has been heightened investor interest in shareholder approval requirements for mergers and takeovers of listed companies undertaking a significant transaction. This issue has been elevated following the application for a waiver to the requirement for a shareholder vote by building products provider James Hardie in relation to its proposed acquisition of US-based Azek. The waiver application by James Hardie under Listing Rule 7.2 was granted by ASX and a detailed rationale for that decision was provided on 16 April 2025 and is attached to this release.

The Listing Rules need to balance 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 represented. However, ASX acknowledges that Australian institutional investors are concerned that the current settings for shareholder approval requirements may not provide them with enough of a voice.

To address this question, ASX will commence work to update an [analysis from 2017](#) which looked at shareholder approval levels needed for listed company mergers, which had a particular focus on reverse takeovers. This will be the first step in conducting a review of shareholder approval requirements as covered by the relevant Listing Rules. At the same time as updating this analysis, ASX will also explore the circumstances in which companies are required to disclose receipt of a waiver to the Listing Rules when they publicly announce the matter to which the waiver relates.

Helen Lofthouse, ASX Managing Director and Chief Executive Officer, said: "We have heard from investors – many of them shareholders of James Hardie – that they want a greater voice for shareholders invested in ASX-listed companies, but we are also mindful that we need to examine this question in a way that ensures we serve the needs of the market as a whole.

"We will seek feedback from stakeholders once we have updated the 2017 analysis and this will support a more informed review of shareholder approval requirements."

Further enquiries:

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17 April 2025

Helen Lofthouse
CEO and Managing Director
ASX Limited

Re: Application of ASX Listing Rules to James Hardie Industries plc acquisition of Azek Company Inc

Dear Helen,

I appreciate that a number of ASX's people have received approaches or enquiries about the James Hardie matter, and that there is a high level of media interest.

James Hardie consent for ASX to comment

ASX Compliance has a normal policy of not commenting on our interactions with individual listed entities. We publish our rules and guidance, we release a monthly update to the market about our approach to compliance issues, and we engage with anyone who approaches us with questions about the rules and how they generally apply. But we're very careful about information that could be identified as relating to a specific entity. We want listed entities to be confident that they can communicate promptly and openly with us about issues involving the application of our rules. Those matters often involve information that is unclear or developing, confidential or market sensitive information, or information that might expose the entity to legal or other risk. This approach is important for market supervision, but it can make it challenging for ASX people outside the Compliance team, who are receiving reasonable enquiries that they are unable to satisfy.

In view of the interest in this matter, we asked James Hardie for its consent to disclose the information we have set out in this note below, for the purpose of responding to enquiries. James Hardie has consented to this.

What ASX was asked by James Hardie to decide

In essence, James Hardie asked us two questions about its proposed acquisition of Azek. These questions were:

1. Would ASX exercise its discretions under listing rules 11.1.2 and 11.1.3 to require shareholder approval of the transaction and re-compliance by James Hardie with the admission and quotation requirements under the Listing Rules?
2. Would ASX be prepared to grant a waiver of listing rule 7.1, so that the issue by James Hardie of shares for the acquisition would not be counted towards the 15% annual limit on share issuances without shareholder approval?

Requests for confirmation in relation to listing rules 11.1.2 and 11.1.3 are common, and requests for the type of waiver that James Hardie requested are not unusual. So we have a significant number of precedents and clear and established guidance setting out our approach to dealing with them.

ASX has some broad discretions under the Listing Rules, but we normally exercise those discretions in line with precedents and guidance. This is consistent with our licence obligation to operate a fair, orderly and transparent market, and allows listed entities to plan and conduct their affairs with confidence.

ASX's decisions

The answer to question 1 followed Guidance Note 12. Anyone who would like to understand that guidance in more detail as it applied to this transaction should refer, in particular, to section 3 of Guidance Note 12, headed "Listing Rules 11.1.2 and 11.1.3: ASX's discretionary powers". Sub-section 3.2 explains the four main circumstances in which ASX would usually exercise its discretion to require approval of a transaction under listing rule 11.1.2. Only one of those circumstances was potentially applicable here, and that is case 1, which applies to a backdoor listing. So in line with our guidance, the question for us was whether James Hardie's acquisition of Azek in fact amounted to a backdoor listing of Azek.

We go on to explain that our approach to this question is to test whether the acquisition involves at least a doubling of one or more of a number of specific financial metrics (consolidated total assets, consolidated total equity interests, and so on). If the answer to that question is "yes", then we will consider whether the transaction is, in fact, a backdoor listing that should require shareholder approval and re-compliance with the admission and quotation requirements. If the answer is "no", then we do not regard the transaction as a backdoor listing, and we do not apply listing rules 11.1.2 and 11.1.3.

Based on the information reviewed by us in connection with the application, the proposed transaction would not result in a doubling of any of the specified financial metrics. The closest that any of them came was an anticipated 66% increase in consolidated total equity interests. Consequently, there was no basis for us to exercise our discretions under listing rules 11.1.2 and 11.1.3, and we provided that confirmation to James Hardie.

The answer to question 2 followed Guidance Note 21. Please refer to section 4 of that note, headed "Permitted issues under Listing Rule 7.2", and, in particular, sub-section 4.7, headed "Exceptions 6 and 7 – takeovers and mergers". This guidance explains the rationale for excluding an issue of securities under a takeover bid or scheme of arrangement from the 15% limit in listing rule 7.1, other than in the case of a reverse takeover, and it states that "ASX will also consider granting a waiver to extend exceptions 6 and 7 to an entity making a takeover offer for, or merging with, a foreign company or trust that can satisfy ASX that the takeover or merger is subject to an acceptable regulatory regime equivalent to the Corporations Act". The Guidance Note advises that ASX has previously granted such waivers in relation to takeovers or mergers under the laws of the US, UK, Canada, New Zealand, Papua New Guinea and Singapore.

In this case, James Hardie, a company incorporated in Ireland, was plainly proposing to conduct a merger with Azek, a company incorporated in Delaware. The merger was proposed to take place under the General Corporation Law of the State of Delaware. So the question for us was whether Delaware law is an acceptable regulatory regime equivalent to the Corporations Act, for purposes of the proposed waiver. There are a number of precedents for granting a waiver of listing rule 7.1 in respect of mergers conducted under US laws, including the laws of Delaware, and this is noted in our guidance. While we consider every waiver request on its merits, ASX remains satisfied that Delaware is an acceptable regulatory regime with respect to corporate mergers, and we confirmed to James Hardie that we would grant the waiver.

ASX's general policy

The policy rationale for our approach to listing rules 11.1.2 and 11.1.3 is set out in Guidance Note 12, and that for exceptions 6 and 7 of listing rule 7.2 and related waivers is set out in Guidance Note 21. In both cases, an important part of the rationale is that there is an established legal framework for these transactions, and that the imposition on listed entities of a requirement for shareholder approval would impose additional transaction costs and timing and execution risk, and put listed entities at a competitive disadvantage to unlisted entities in the market for corporate mergers and acquisitions. Our approach to foreign jurisdiction waivers of listing rule 7.1 reflects the fact that ASX-listed entities are operating in a global market for mergers and acquisitions.

A copy of this note has been provided to James Hardie's lawyers for the purpose of obtaining the company's consent to disclosure.

Kind regards

Daniel Moran
Chief Compliance Officer