

2 June 2017

Office of the General Counsel
ASX Limited
20 Bridge Street
Sydney NSW 2000

Via email: regulatorypolicy@asx.com.au

Attention: Janine Ryan

Reverse Takeovers – Response to Consultation, April 2017

On behalf of the Australian Council of Superannuation Investors (ACSI), we are pleased to make this submission in response to the ASX's Draft Listing Rule Amendments that seek to enhance investor protections in relation to reverse takeovers.

ACSI makes this submission on behalf of its members, 37 asset owners and large institutional investors, who together invest over \$1.5 trillion. A significant proportion of our members' assets are invested in the Australian equity market and we therefore support the maintenance of appropriate governance standards and investor protections within the ASX Listing Rules.

In recent years, ACSI has been extremely concerned by a number of transactions that have exploited the gap in the current ASX Listing Rules which allows companies to avoid seeking shareholder approval for company-transforming acquisitions. We acknowledge the work of the ASX in responding to these concerns and developing the Exposure Draft Listing Rules to address the lack of investor protections in the current framework.

Whilst we note these improvements, we remain concerned by the proposed 100% dilution threshold. Although the dilution threshold is outside the current consultation, we see an ongoing risk that the amended Listing Rules will be viewed as an anomaly. Many global investors will view the new rules as significantly weaker than most of the comparable international exchanges outlined in *Annexure A* of the *Exposure Draft*.

It is disappointing that opposition to a lower approval threshold was based on a potential, and unproven, impact on the market for corporate control. As mentioned in earlier submissions, we note that the international markets with lower dilution thresholds, and therefore stronger investor protections, maintain very active markets for corporate control.

We also note that 10 of the 13 submissions received in response to the ASX's December 2015 Consultation were supportive of stronger investor protections regarding reverse takeovers. It was notable that all of these submissions were put forward by either large asset-owners, asset-managers, their advisors or representative bodies. The views expressed in the majority of submissions appears to have been overridden by the submissions of two law firms, and the Law Council, which appeared to pay very little regard to the protection of shareholder rights in the ASX Listing Rules.

A detailed response to the specific issues raised in the Consultation is included below. I trust that our comments are of assistance to the Consultation and please contact me should you require any further information on ACSI's position.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Louise Davidson', written in a cursive style.

Louise Davidson
Chief Executive Officer

Annexure – Response to Specific Draft Listing Rule Amendments:

1. Oversight and ASX Discretion

ACSI is concerned that the 100% dilution threshold may be open to gaming as companies could seek to exploit the Draft Listing Rule by simply adjusting the cash/equity mix in a transaction. For example, a company seeking to avoid shareholder approval could simply adjust the cash/equity ratio of a scheme of arrangement to avoid the threshold e.g. offering 'target' company shareholders 99% scrip consideration and cash equivalent to another 1%.

Response:

ACSI sees a strong need for the ASX to monitor transactions, exercise discretion and intervene where transactions appear to have been structured to avoid shareholder approval. ACSI also recommends a periodic review of the operation of the proposed Listing Rules to ensure that the 100% dilution threshold is not being exploited to disenfranchise shareholders in particular transactions.

2. Voting Exclusions and Definition of Associates

ACSI is supportive of the proposed amendments in relation to voting exclusions and the amended definition of 'associate.' On voting exclusions, we see it as positive that the target and its associates will not be permitted to vote 'in favour' of the resolution approving the reverse takeover. We also support the pragmatic approach whereby securityholders will not be excluded from voting simply by virtue of owning securities of both the bidder and target. We view the amended Listing Rules as ensuring that transactions will be approved by securityholders who do not have a personal interest in the transaction.

We support the ASX's view that the definition of associate should apply to controlling shareholders, regardless of their legal status. We support the application of the updated definition of associate throughout the Listing Rules, beyond reverse takeovers.

Response:

ACSI supports proposed changes to voting exclusions and the amended definition of associate.

3. Review of Guidance Note 21

ACSI is supportive of proposals in relation to the content of notice of meeting. Specifically, we welcome the proposed issue of a new Guidance Note 21 The Restrictions on Issuing Equity Securities in Chapter 7 of the Listing Rules. ACSI is broadly supportive of the information outlined in the Consultation Paper with regard to reverse takeovers.

Response:

ACSI welcomes the proposed issue of a new Guidance Note 21. This guidance should ensure that the security holders of bidder entities will receive an appropriate level of information to make a judgement on reverse takeover proposals.