ALLANGRAY
CONTRARIAN INVESTING

7 November 2025

ASX Limited
39 Martin Place
Sydney NSW 2000

Attention: Andrew Campion
By email: ListingsPolicy@asx.com.au

Dear Andrew

ASX public consultation on shareholder approval rights
Shareholder approval of dilutive acquisitions and changes in admission status

Allan Gray Australia Pty Limited is an active long-only fund manager and manages approximately A$11 billion in Australian equities on behalf of Australians. Globally, Allan Gray and its sister company Orbis manage approximately US$100 billion.

Thank you for the opportunity to participate in the public consultation on shareholder approval requirements under the ASX Listing Rules.

While we are supportive of the changes the ASX has proposed in sections 3 and 4, we will restrict our answers to section 5 (Bidder shareholder approval of share issues for takeovers and mergers – Exceptions from Listing Rule 7.1) and section 6 (Security holder approval for change to nature or scale of activities under Listing Rule 11.1.2) only.

Section 5: Bidder shareholder approval of share issues for takeovers and mergers

Before addressing your specific questions, we would like to summarise our views on Listing Rule 7.1 and also address your highlighted arguments for maintaining the status quo.

It is reasonable to afford latitude to elected directors tasked with stewarding shareholder capital. It is also reasonable to ensure that checks and balances are in place and that these are not overly burdensome and don't contribute to an ever-growing culture of box-ticking. For share issuances, we don't believe that the current ASX Listing Rules strike the right balance and feel that they need to be tightened to ensure shareholders have a greater say in dilutionary scenarios.

It is exceptions 6 and 7 to ASX Listing Rule 7.1 which are the most problematic. Simply removing these would enhance shareholder protections. This is our preference. This in effect would result in issuances above 15%/25% (depending on the size of the company) of the issued shares over a 12-month period requiring a shareholder vote. If these thresholds are unpalatably low, perhaps they could be changed to 25%/35%, but any higher would be unacceptable.

We strongly disagree with the slated arguments in favour of maintaining the status quo:

- It is true that transactional decisions are primarily matters for the directors of the companies in question, however that is not to say that they should be afforded carte blanche to exercise their fiduciary duties as they see fit. Laws and rules are littered with safeguards that provide for checks and balances. This is no exception. It has been publicly suggested by ASX representatives that shareholders have suitable alternative tools to avoid dilution or express dissatisfaction with transactional dilution e.g. by engaging with directors prior to transactions or voting them off the board where they are displeased with an executed transaction. In the former, engagement opportunities are too late as transactions are already consummated by the time shareholders would choose to engage (putting aside the issues with access to material non-public information which would be required in order to proactively engage prior to transactions being executed) and in the latter, voting against board members is unnecessarily destabilising and, if anything, is a last resort.
- ASX Listing Rule changes would not inflict a competitive disadvantage on listed bidders relative to unlisted bidders. Shareholder votes are neither onerous nor expensive and the timing of these could easily be coincided with, or even take place before, a target's shareholders are afforded the opportunity to vote (in the case of a scheme). Furthermore, unlisted bidder transactions are primarily cash transactions. Listed bidder transaction considerations are either cash or share-based (or some combination). It is impossible to compare them and it is quite likely that share-based considerations are advantageous to all-cash transactions as it affords a cohort of investors in the target company the opportunity to retain some exposure to the merged entity. In any event, giving a vote to the bidder company's shareholders will neither slow the transaction process nor introduce material costs.
- It is accurate to note that takeovers and mergers are governed by the Corporations Act and subject to oversight from regulators, the Takeovers Panel and the courts. However, if the inference is that it is therefore not necessary to incorporate shareholder dilution protections in the ASX Listing Rules we disagree and note that there are many instances where the current Listing Rules attempt to afford some protections in these instances.
- We have already referenced the ease with which general meetings of shareholders can be conducted. Consequently, there is unlikely to be an unreasonably significant increase in execution risk as a consequence of a security holder approval condition on an acquisition. Even were this true, the shareholder protections that come with it will significantly outweigh the execution risk. Sensible deals are generally consummated (e.g. Woodside putting its BHP Petroleum transaction subject to a shareholder vote) – to suggest that it is a shareholder vote that might be "a straw that breaks a camel's back" is far-fetched. Nor is this likely to necessitate a transaction premium or outsized break fee.
- It is almost certainly not true that an increased regulatory burden from being listed may discourage more entities from listing or encourage listed entities to delist. If anything, introducing stricter dilution limits brings the ASX more into line with other desirable exchanges and it may well work in exactly the opposite way to this suggestion. Capital flows to companies listed on the ASX may well increase as shareholder protections afforded to the providers of this capital are tightened.

With respect to your specific consultation questions:

Question 7: Should the current limit on issues of securities without approval under exceptions 6 and 7 in Listing Rule 7.2 be reduced?

The actual limits in terms of rule 7.1 are reasonable – as you note, they are set at 15% or effectively 25% for smaller companies that satisfy certain requirements. It is exceptions 6 and 7 that present the issues – these exceptions either need to be removed (our preference) or a 25% limit per transaction introduced above which the exceptions cannot be relied upon.

Question 8: If the limit is reduced, should this be to 75%, 50%, 25% or another amount?

We favour a 15% limit as per Listing Rule 7.1.

Somewhat contradictorily, we have advocated for some listed companies to introduce a constitutional approval threshold of 25% - this is consistent with the ASX's views in Guidance Note 12 on what constitutes a significant transaction, and is more generous and would afford directors even more leeway to pursue transactions without shareholder approval. It is hard to imagine a limit higher than this that would be acceptable to the investor community (specifically shareholders).

Question 9: Should the current limit (the reverse takeover limit) be kept for entities outside the S&P/ASX 300 and with no more than $300 million market capitalisation (the same group of entities as for Listing Rule 7.1A)?

It is hard to appreciate why 25% is not an acceptable limit for all companies. There is little burden to seeking shareholder approval for value-creating transactions and these approvals can be timed to coincide with or take place before a target company's shareholders vote.

Furthermore, market capitalisation limits are arbitrary numbers which become increasingly meaningless with the passage of time. In a world where significant resources and capital are channelled into gaming index inclusions, it is hard to see how a company's inclusion in the S&P/ASX 300 should be a defining input into whether shareholder rights are protected. By differentiating the thresholds that apply between small and large companies, the ASX would invite more gaming to get into indices (e.g. through transactions that double the size of businesses). A $300m market capitalisation limit would not stand the test of time and require periodic updating.

Again, shareholder meetings are not onerous to arrange nor are they expensive to hold.

Question 10: Do you think that reducing the limit on issues of securities without approval under exceptions 6 and 7 in Listing Rule 7.2 would make it more difficult for listed bidders to compete in and execute takeovers and mergers? If so, what problems would it create?

No. But at worst, we think this would be a small price to pay, even if the investment bankers and their lawyers purport it to be true.

Question 11: What do you think may be the direct and indirect costs of the introduction of a lower limit on issues under exceptions 6 and 7? Would these costs be outweighed by the potential benefits?

There are likely to be low direct costs associated with the need to hold shareholder general meetings but these costs would be far outweighed by the potential benefits. There are unlikely to be material indirect costs.

Question 12: Do you think that exceptions 6 and 7 should be strictly limited to issues under takeovers and mergers conducted under Australian law, with no waivers provided to extend them to takeovers and mergers conducted under the laws of foreign jurisdictions?

We think exceptions 6 and 7 do more harm than good. We favour their removal entirely.

Question 13: Are there any other significant unintended consequences or other risks that this change raises that have not been considered in this consultation paper? If so, are there ways that these risks may be satisfactorily addressed while still proceeding with the proposed change?

From an objective perspective, there will almost certainly be some unintended consequences to our proposal. We can't think of any that would not be more than offset by the benefits that flow from the changes.

Section 6: Security holder approval for change to nature or scale of activities under Listing Rule 11.1.2

It seems reasonable to allow shareholders to vote on transactions, both acquisitions and disposals, that substantially change the company in which they are invested. Disposing of or acquiring / changing a main undertaking should be voted on by shareholders, as should transactions that significantly change the nature or scale of an entity's activities.

A recent example of this is AMP's announced sale of its wealth protection and mature businesses to Resolution Life in October 2018. This did not require shareholder approval. As at 30 June 2018, these businesses had a combined embedded value of A$3.2 billion (with the sale being touted as having been done at 0.82x embedded value), approximately 34% of the pre-deal market capitalisation. However, in the week following the deal, A$2.6 billion was wiped off AMP's market capitalisation implying a (rough) market valuation of A$5.2 billion or 56% of the pre-deal market capitalisation.

With the stroke of a pen, AMP was radically transformed and in ways unimaginable prior to that. And shareholders, who could not vote on this transaction, were furious. The ASX Listing Rules failed shareholders in this instance and transferred that value to private markets. There needs to be adequate safeguards implemented to subject material changes to a company's main undertaking to a shareholder vote. These safeguards might not alter the outcome of transactions like the AMP Life sale, but they will ensure that stewards of shareholder capital are forced to canvass shareholder support on the transaction merits. It just raises the bar, and not unreasonably so.

Listing Rule 11's application should be extended beyond backdoor listings. We support the suggestion to introduce new rules into Chapter 11 (while leaving 11.1 to regulate backdoor listings) that would require shareholder approval for both significant acquisitions and disposals. While we note there is some complexity involved, protecting shareholder rights is paramount. That these changes would impact a considerably larger number of transactions should not hinder any appetite to make these changes – we've previously made the point that meetings of shareholders are not difficult or expensive to arrange.

By not addressing Listing Rule 11's shortcomings, the investing community is exposed to companies gaming the spirit of any changes to Listing Rule 7.1.

Consider two scenarios where Company A funds the acquisition of Company B. In the first scenario, A issues shares in itself as consideration for all of the shares in Company B such that the total Company A shares on issue doubles, less one share (so as not to force a required reverse takeover vote under the current rule settings). Assume both Company A and Company B are valued at $100 each. That the size of the combined company has doubled suggests a material change to or increase in the size and scale of the company's activities, and potentially a change to its main undertaking. It would be reasonable for Company A's shareholders to expect a vote on this transaction and under the proposed rule changes to Listing Rule 7.1 they would be afforded a vote (as the dilution hurdle reduces from 100% to 25%).

Now assume in scenario 2, Company A issues 25% (less one share) of its outstanding shares ($25 in value) and borrows or uses its cash reserves to fund the remaining $75 required consideration. Shareholders of Company A would not be afforded a vote as this transaction would not fall foul of the (hypothetical) new Listing Rule 7.1. but the materiality of the change in the company's scale of activities, and potentially main undertaking, is no different. The company has doubled its size and there has been an undeniable and material change. Scenario 2 is different to Scenario 1 only because of the difference in the capital structure used to fund the acquisition of Company B.

It is for this reason that Listing Rule 7 should not be considered in isolation and Listing Rule 11 needs to be expanded to require shareholder approval for acquisitions and disposals that constitute a significant change to the nature or scale of the company's activities.

Our response has stopped short of highlighting specific rule changes that the ASX should consider and we would welcome the opportunity to engage further.

Yours sincerely

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