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By email: ListingsPolicy@asx.com.au

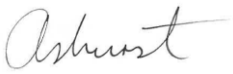
Dear Mr Campion

ASX Consultation Paper – Shareholder approval of dilutive acquisitions and changes in admission status

This submission is made by the Corporate Transactions Team at Ashurst in response to the proposals raised in the *Consultation Paper – Shareholder approval of dilutive acquisitions and changes in admission status: Public consultation on shareholder approval requirements under the ASX Listing Rules* dated 20 October 2025 (**2025 Consultation Paper**).

We appreciate the opportunity to provide this submission as part of the consultation.

Ashurst



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We have set out below our responses to Questions 7 to 13 of the consultation questions in the 2025 Consultation Paper relating to 'bidder shareholder approval of share issues for takeovers and mergers – Exceptions from Listing Rule 7.1'.

While there has been substantial media attention and investor discontent agitating for changes to the shareholder approval requirements relating to the issuance of shares under a takeover or merger, Ashurst does not consider that reducing the reverse takeover limit of 100% to ASX's proposed cap of 25% will achieve the intended outcome of ensuring the right balance is struck between protecting shareholder rights and maintaining a proper and efficient market.

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

No. We do not consider that the current "reverse takeover" limit of 100% should be reduced.

ASX considered its approach to reducing the limit on issuances of securities without approval in its 2015 Consultation Paper,[1] and the introduction of the "reverse takeover" limit in 2017 was a direct response to this issue which arose following investor concern surrounding the Roc Oil and Horizon Oil merger in 2014, and the earlier proposed reverse takeover of Gloucester Coal by Whitehaven Resources in 2009 - both referenced in the 2015 Consultation Paper.

ASX has not identified, in its 2025 Consultation Paper, any new circumstances that have arisen in the Australian M&A market, since it last considered this issue, that would warrant reconsideration of the share issuance limits again.

In 2017, ASX considered as part of its "Response to Consultation" (**2017 Response Paper**) concerns that shareholders may be "subject to unlimited dilution as a result of a takeover", without their approval. ASX introduced a 100% limit, which directly addressed this issue of unlimited dilution.

In particular, we highlight ASX's key observations and positions in the 2017 Response Paper[2] in considering lower thresholds of between 25% - 50%. ASX:

- considered that adopting a lower threshold "*would represent a fundamental change in the regulation of control transactions in Australia"*;
- considered that "*a convincing case has not yet been made for such a fundamental change";*

[1] Consultation on Shareholder Approval Requirements for Listed Company Mergers – ASX Consultation Paper, 10 November 2015.

[2] Pages 6, 11 and 12, 2017 Response Paper, 12 April 2017.

- considered that the costs of reducing the limit would outweigh the benefits to companies, and that indirect costs "*could be significant and could have a material impact on the ability of Australian listed entities to compete in the market for corporate control"; and*

- recognised the role of existing bodies that govern and regulate control transactions noting that "*the Takeovers Panel and ASIC have certain discretionary powers in relation to takeovers generally, including reverse takeovers. Under the Corporations Act, these discretionary powers are primarily focussed on issues relating to control of an entity rather than dilution of existing shareholders"*.

We consider that these statements continue to remain true, and that there should be no change to this view, given the policy rationale has not deviated from the observations made in 2017. The key concern around "unlimited dilution" was remedied by the introduction of the "reverse takeover" limit.

The relevant issue here is about dilution, not control – and in that regard, reiterate ASX's remarks in the 2017 Response Paper that *"the Corporations Act, ASIC and the Takeovers Panel are, and should remain, the primary source of regulation for takeovers in Australia*".[3]

We make the following observations about the 2025 Consultation Paper:

- the 2025 Consultation Paper is a direct response to institutional investors' agitating concerns after the acquisition by James Hardie Industries plc of The Azek Company Inc – we note in this regard that there are divergences of opinions on this issue across the market;[4]

- as ASX in 2017 observed that reducing the 100% limit "*could have a material impact on the ability of Australian listed entities to compete in the market for corporate control"* - we agree that such a change will unduly restrict a listed company's board to compete in many situations, thereby depriving the company and its shareholders of potentially beneficial transactions;

- ASX in its 2025 Consultation Paper places significant weight on comparative regulatory thresholds from overseas markets. It undertook the same exercise in 2017, introducing the 100% threshold to "*ensure that*

[3] Page 4, 2017 Response Paper.

[4] For example, Sandon Capital Pty Ltd sought to amend Southern Cross Media Group Limited's constitution to introduce a cap on share issuances to that company as a response to its proposed merger with Seven West Media Limited but this proposal was promptly rejected by Thorney Investment Group Australia Pty Ltd (and its associates) and Spheria Asset Management Pty Limited.

ASX is appropriately positioned amongst international exchanges".[5] In considering other jurisdictions, ASX acknowledged "the particular nature of the Australian market" and the "broader regulatory settings in other jurisdictions". We agree that it would be inappropriate to take a selective view of certain elements of other regulatory regimes without acknowledging the M&A landscape and unique features of such other markets.[6]

We also note that a change in the rules or guidance to solve for investor discontent does not put sufficient weight on the fact that there are adequate mechanisms for shareholders to deal with their concerns for example, under the Corporations Act, exercising their shareholder rights, or otherwise simply through market based conduct.[7]

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

If the ASX determines that a reduction to the limit is appropriate, we consider that a reduction to a 50% cap would be more appropriate than a change to 25% in a small market like Australia, and would strike a nuanced balance between:

- addressing controversial scenarios where any dilution remains just over the control mark (e.g. in the proposed Southern Cross Media and Seven West Media merger, which would result in Southern Cross Media shareholders owning 50.1% of the merged entity); and
- ensuring boards of listed companies are not wholly deprived of their flexibility to structure deal terms and compete against their unlisted counterparts.

Additionally, we agree that a lowered threshold should only apply to a sub-set of companies. It is important that smaller listed companies maintain the flexibility to issue scrip consideration as they may not have the cash and debt ratio available to otherwise fund acquisitions. We consider that an even narrower sub-set than that currently proposed by the ASX in the 2025 Consultation Paper would be an improvement to the proposal – e.g. ASX100.

We further consider that shareholders should be able to approve a higher limit, and disapply the application of the 'cap' in their annual general meeting, or constitution.

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[5] Page 12, 2017 Response Paper.

[6] For example, the wide acceptance of dual class shares in markets such as the US, Singapore, the UK and Canada, which has been resisted in the Australian market.

[7] For example, voting out directors (as recently occurred with James Hardie Industries plc), amending a company's constitution to introduce a cap (as recently occurred with Orora Limited), or show discontent in other ways such as through the "two strikes" rule.

3. **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)?**

Yes (though see our comment above which considers that the current limit should be retained for entities outside the ASX100).

4. **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?**

Yes. We consider that reducing the limit as ASX proposes will have adverse consequences to the competitiveness of the Australian public M&A market, as:

- listed bidders offering scrip consideration would likely become unattractive M&A counterparties, due to actual or perceived increases in deal uncertainty or delay resulting from the need to receive bidder shareholder approval;
- listed bidders may be hamstrung in their ability to compete with their unlisted counterparts resulting in a need to offer targets more attractive terms (such as large reverse break fees) as the "price to play";
- listed bidders may alternatively turn to less optimal transaction or funding structures, including greater debt funding resulting in more leverage; and
- transactions may be vetoed by bidder shareholders for strategic reasons not directly related to the deal terms. This would deprive all shareholders from being able to participate in the benefits of a transaction.

5. **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?**

The indirect costs are extensive and are as mentioned in our response in Question 10 above. Direct costs, albeit less onerous, also include the time, cost and administrative burden.[8]

The potential benefits are effectively to mitigate the potential for a significant dilution of bidder shareholders. However, as detailed in our response in Question

[8] E.g. to prepare and despatch a notice of meeting, hold a general meeting and pass the required security holder resolutions.

7 above, we do not consider this marginal benefit outweighs the significant adverse implications that will arise if the threshold were to be lowered.

6. **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?**

No. We support the current ASX position of granting waivers to extend Exceptions 6 and 7 in Listing Rule 7.2 to entities making a takeover offer for, or merging with, a foreign company or trust if the ASX is satisfied that the transaction is subject to an acceptable regulatory regime equivalent to the *Corporations Act 2001* (Cth).

We do not consider there is any need to deviate from the ASX's existing policy by requiring security holder approval in circumstances where the foreign regulatory regime affords shareholders similar levels of oversight and protection to an Australian takeover or scheme of arrangement. These waivers have been granted in respect of takeovers or schemes under the laws of the US, UK, Canada, New Zealand, Papua New Guinea and Singapore.

This ensures that Australia's public markets continue to remain competitive amongst other markets.

7. **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?**

We have raised concerns regarding the consequences or risks of this change in our responses to the questions above.

For completeness, we firmly agree with ASX's view that no change to Chapter 11 to mandate shareholder approval for significant acquisitions should be introduced.