15/12/2025

ASX Limited

39 Martin Place

Sydney NSW 2000

Attention: Andrew Campion

Via email to: **ListingsPolicy@asx.com.au**

Dear Mr Campion,

Public consultation on shareholder approval requirements under the ASX Listing Rules

AustralianSuper welcomes the opportunity to provide feedback on proposed changes to shareholder approval requirements for dilutive acquisitions, as well as changes in admission status under the ASX Listing Rules.

1. About AustralianSuper

AustralianSuper is Australia's largest superannuation fund and is run solely to benefit members. Over 3.6 million Australians are members of AustralianSuper, and we invest over $400 billion of retirement savings on their behalf. AustralianSuper's purpose is to help members achieve their best financial position in retirement, and our investment approach is designed to deliver on this goal.

AustralianSuper invests more than $175 billion in Australia, including more than $100 billion in Australian listed equities[1]. AustralianSuper is an active, long-term investor and manages 95% of its Australian Equities portfolio internally, making it the largest predominantly active manager in ASX listed equities.

2. Summary

AustralianSuper is highly supportive of the proposed changes to the ASX Listing Rules outlined for consultation.

In our view, the current shareholder approval thresholds do not strike the right balance between shareholder protection and the facilitation of mergers and takeovers, nor do they provide adequate protections to shareholders in relation to changes in listing status of dual listed companies. It is important that the ASX Listing Rules support the creation of long-term value by listed entities, while protecting shareholders from excessive dilution and the erosion of ownership rights. Mergers and acquisitions can be an important mechanism for value creation, but the framework for these transactions must adequately consider the interests of shareholders, including their rights to scrutinise proposed transaction activity. We believe that shareholders should have the right to a vote on significant, dilutive transactions that could materially impact the long-term value of their investment.

As a result, AustralianSuper agrees that:

- Security holder approval should be required when a dual listed company seeks to change to ASX Foreign Exempt Listing status. We consider that approval should be given by special resolution, and that the Listing Rules should be amended to mandate this.
- Security holder approval should be sought for any voluntary delisting by a dual listed entity, except where that company was first listed on an overseas exchange and provided that its securities remain readily tradeable on that exchange. We consider that this approval should be given by special resolution (except in the case of an ASX Foreign Exempt Listing that was previously approved by a special resolution) and that the Listing Rules should be amended to mandate this.
- The threshold for security holder approval for share issues under a regulated takeover or merger should be lowered. We consider that a lower threshold is critical to protect the underlying owners of companies from excessive dilution and we support ASX's proposal to set this at 25%. We are neutral on the proposal to limit this change to companies in the S&P/ASX 300.

[1] As at 30 September 2025

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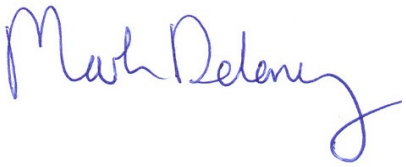
We also consider that Listing Rule 11 should be reviewed by ASX to better protect security holders when significant disposals are undertaken by listed entities.

3. Further details

We have carefully considered each of the questions and options contained in the Consultation Paper and provide our further comments in the Attachment. If you require any additional information or wish to discuss this submission, please do not hesitate to contact Lucy Bradlow, Manager, Government Relations and Public Policy (lbradlow@australiansuper.com).

Regards,



Mark Delaney

Chief Investment Officer

T 03 8648 3900
Level 30, 130 Lonsdale Street
Melbourne VIC 3000 Australia
australiansuper.com

Attachment – Comments in response to ASX's public consultation on shareholder approval requirements under the ASX Listing Rules

Shareholder approval for change of admission category to ASX Foreign Exempt Listing

1. **Should security holder approval be required for a change in admission category from ASX Listing to ASX Foreign Exempt Listing?**

   AustralianSuper supports ASX amending the ASX Listing Rules to require security holder approval for an entity to change from an ASX Listing to an ASX Foreign Exempt Listing.

   A change in admission category could substantially change the governance framework of a dual listed entity. As noted in the Consultation Paper, moving to an ASX Foreign Exempt Listing means that the entity becomes principally governed by the rules of its overseas home exchange and will only be required to comply with a limited subset of the Australian Listing Rules. Foreign exchanges may have different or even conflicting requirements compared with ASX. For example, the NYSE permits companies to issue equity to insiders without security holder approval, to issue stock during takeovers, and potentially to introduce dual class shareholdings.

   Accordingly, such changes in admission category may have a material and permanent impact on security holder rights, including the removal of protections relied upon by security holders investing in ASX listed securities. In these circumstances, it is reasonable that security holders are given the opportunity to vote on any proposal to change the admission category.

   We consider that this vote should be by special resolution. The *Corporations Act 2001* (Cth) does not enable a Board to unilaterally reduce the rights of security holders in a constitution without a special resolution, and the same principle should apply under the Listing Rules.

   Finally, we agree with ASX that amending the Listing Rules to incorporate a new security holder voting requirement provides greater transparency, certainty and consistency of approach compared to introducing new guidance for this change.

2. **Are there any significant unintended consequences or other risks that this change raises that have not been considered in this consultation paper?**

   This change should impact a small number of companies, as ASX has only identified three instances of an entity changing to a Foreign Exempt Listing in the last three years. Furthermore, the timing of an application for a Foreign Exempt Listing is within the entity's control, allowing it to manage the cost of the change by, for example, seeking security holder approval at its AGM. Accordingly, we do not consider that there are any significant disadvantages or unintended consequences arising from the proposed change.

Shareholder approval for voluntary delisting by a dual listed entity

3. **Should security holder approval be required for a voluntary delisting by a dual listed entity on ASX?**

   AustralianSuper supports the proposal to require security holder approval when a dual listed entity voluntarily seeks to delist from ASX.

   We agree with ASX that seeking security holder approval for a delisting is considered good governance, given the significance of the decision and its impact on the entity's security holders. It is instructive to observe that several reputable overseas exchanges (including SGX, TSX, NZX and HKEx) require shareholder approval to delist dual listed companies (subject to certain conditions). This contrasts with ASX's current approach, which may allow an entity that has issued a minority of its securities on an overseas exchange to delist from ASX without engagement with its security holders.

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However, as noted above, foreign exchanges may not provide equivalent security holder rights to those granted by ASX. Consequently, the rights of security holders may be materially impacted if the entities in which they invest cease to be subject to the ASX Listing Rules. For this reason, we consider that a special resolution of security holders should be required to delist any dual listed entity that is:

a. an ASX Listing; or

b. an ASX Foreign Exempt Listing that was not previously approved by a special resolution of security holders.

In our view, amending the ASX Listing Rules to incorporate the new security holder voting requirements is preferable to introducing new ASX guidance, in the interests of certainty and greater transparency.

4. **If security holder approval is required, should this apply only to a dual listed entity that was first listed on ASX, but not to an entity that was listed on a foreign exchange before listing on ASX?**

   We do not object to entities that were first listed on an overseas exchange being exempt from the security holder approval requirement, provided that their securities remain readily tradeable on the relevant overseas exchange at the time of the delisting application to ASX. We do not think it is unreasonable to expect that an entity's governance arrangements would most closely reflect the rules of its home exchange, and we acknowledge the importance of attracting additional listings to ASX.

5. **If security holder approval is required, should this be by ordinary resolution? Should a special resolution rather than an ordinary resolution continue to be required if the entity's ordinary securities are not readily able to be traded on another exchange?**

   We believe that security holder approval by special resolution should be required for a delisting in all cases, except where the entity was first listed on an overseas exchange and its securities remain readily tradeable on that exchange, or for an ASX Foreign Exempt Listing that was previously approved by a special resolution. This approach reflects the potentially adverse impact on security holder rights and liquidity.

6. **Are there any significant unintended consequences or other risks that this change raises that have not been considered in this consultation paper?**

   We do not consider that there are any significant unintended consequences arising from the proposed change, noting that the timing of the change remains within the control of the entity.

Bidder shareholder approval of share issues for takeovers and mergers – Exceptions from Listing Rule 7.1

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

   Yes. AustralianSuper strongly believes that the application of exceptions 6 and 7 to Listing Rule 7.1 does not provide the owners of a listed entity with sufficient protection from excessive dilution in the context of significant acquisitions.

   ASX listed entities should not be able to issue a significant volume of securities and significantly dilute existing shareholders as part of a merger or acquisition, without a shareholder vote. The James Hardie - Azek transaction is a prominent example of why shareholders have significant concerns, however, our concerns extend beyond a single deal. The current Listing Rules allow an ASX listed entity to materially dilute its owners and (in the case of foreign mergers and acquisitions) take steps to shift the listing jurisdiction, thereby fundamentally altering shareholder rights.

   Since the James Hardie transaction, we have observed other deals in the market that have been structured to avoid a security holder vote. This trend underscores the need for stronger safeguards.

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

   It is our firm view that an entity's existing shareholders must not be diluted excessively, and certainly not in a merger or acquisition context, without their consent. This is part of the fundamental premise of Listing Rule 7.1. Accordingly, we would like to see a sensible restriction on issuances in that context so that they are not excessively dilutionary to existing shareholders. To that end, we support reducing the shareholder approval

T 03 8648 3900
Level 30, 130 Lonsdale Street
Melbourne VIC 3000 Australia
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threshold to 25% of the ordinary securities on issue at the date of announcement of the transaction, provided that entities cannot otherwise issue securities in connection with the transaction without a securityholder vote under Listing Rule 7.1.

While Boards of a company oversee corporate activity on behalf of shareholders, we believe shareholders should have the ability to protect the value of their investment in the context of significantly dilutive, and potentially value destructive, transactions. Introducing a shareholder approval requirement would increase disclosure and transparency, as companies would need to provide detailed information about the transaction and its impact in order to facilitate a shareholder vote. It would also strengthen accountability and scrutiny, requiring Boards and management to justify major transactions to shareholders and ensuring deals are in the best interests of the company and its owners.

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)?**

   Although our arguments apply equally to companies outside the S&P/ASX 300 and with no more than $300 million market capitalisation, we are neutral on the proposal to maintain the current approval requirements for these entities.

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?**

    Requiring shareholder approval creates an additional requirement to the execution of deals. However, many major overseas markets (as identified in the Consultation Paper) require shareholder approval for significant share issues and remain active and competitive markets for takeover activity. Companies in these jurisdictions have adapted to the rules by planning shareholder engagement early and structuring deals to accommodate approval timelines.

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 costs of obtaining shareholder approval would be minimal in comparison to the amount of shareholder funds spent on a transaction and the potential impact on shareholder value of the deal itself. Further, ASX research has shown that the number of deals impacted by a 25% approval threshold is not anticipated to be large: less than 35% of transactions would have been captured by this threshold over the past five years (excluding transactions with bidders outside the S&P/ASX300 or with a market cap less than $300m). These facts suggest that implementing the proposed changes should not be overly burdensome on listed companies.

    We also believe that any indirect costs can be managed with advanced planning and engagement by a listed entity. For our part, we continue to welcome engagement with companies to discuss our views on transactions before material shareholder funds are expensed on them.

    While we acknowledge that requiring shareholder approval may introduce some deal execution risk, prioritising M&A activity in the market at the expense of shareholders is neither appropriate, nor in the long-term interests of investors. Shareholder rights should not be compromised to improve the ease of transactions, and we urge ASX not to give undue weight to the promotion of transactions at the expense of an entity's existing owners. Good transactions will still be supported by shareholders if they create value, but shareholders must have the opportunity to veto value destructive transactions that have capacity to significantly dilute their ownership. In our view, these considerations outweigh the counterarguments.

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 do not object to continuing to extend exceptions 6 and 7 to takeovers and mergers conducted under the laws of foreign jurisdictions, provided that the 25% approval limit is also applied in these cases to ensure an adequate level of shareholder protection.

13. **Are there any other significant unintended consequences or other risks that this change raises that have not been considered in this consultation paper?**

T 03 8648 3900
Level 30, 130 Lonsdale Street
Melbourne VIC 3000 Australia
australiansuper.com

We do not consider that there are any significant unintended consequences arising from the proposed change. In our view, the impact on security holders of retaining the existing approval threshold in the Listing Rules is of greater consequence.

Security holder approval for change to nature or scale of activities under Listing Rule 11

AustralianSuper believes that the proposed changes to Listing Rule 7 will adequately address the issue of excessive shareholder dilution in connection with takeovers and mergers. Notwithstanding this, we also believe that Listing Rule 11 warrants review by ASX.

Our concern is that this Listing Rule could be used coercively to force minority shareholders to accept a transaction that they may not otherwise support. For example, if a sale of all the securities in a company is not approved by a special resolution of security holders under a scheme of arrangement, that company could propose to still sell the most valuable part of its business without breaching Listing Rule 11 by seeking approval by an ordinary resolution of security holders under Listing Rule 11.2. This scenario has the potential to leave minority shareholders, who may otherwise oppose the transaction, invested in a depleted business if they do not approve the scheme and the company successfully proceeds with a disposal of its main undertaking. While dilution of shareholders is a key concern, AustralianSuper is also concerned about the destruction of long-term value, and we do not believe that the other proposals in the Consultation Paper adequately address this risk.

We support ASX engaging in further consideration and consultation in respect of amendments to Chapter 11, and we would also encourage ASX to consider more regular reviews of the ASX Listing Rules in response to market developments.

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