Executive Summary

We appreciate the opportunity to respond to ASX's consultation on shareholder approval requirements. We broadly support ASX's proposed approach to enhance shareholder protections while maintaining the competitiveness and attractiveness of Australia's public markets.

Our key positions:

- **Proposal 1:** Support with implementation clarifications required
- **Proposal 2:** Strongly support with proposed limitations
- **Proposal 3:** Support framework but recommend waiver mechanism for smaller companies
- **Proposal 4:** Support ASX's position that no changes to Chapter 11 are required at this time

Proposal 1: Shareholder approval for change to ASX Foreign Exempt Listing

1.1 Position: SUPPORT (with clarifications)

We agree that shareholder approval should be required when a dual-listed company changes from standard ASX Listing to ASX Foreign Exempt Listing status.

1.2 Rationale

1.2.1 Materiality of Change

The transition to Foreign Exempt Listing represents a fundamental shift in governance and investor protection frameworks. Australian shareholders face meaningful changes including:

- Reduced disclosure obligations under ASX rules
- Primary governance by foreign exchange rules that may differ substantively from ASX standards
- Potential differences in continuous disclosure, related party transactions, and corporate governance standards

1.2.2 Information Asymmetry Concerns

- While shareholders retain the ability to trade on ASX post-change, they may not fully appreciate the regulatory implications
- Unlike a delisting (where the signal is clear), a change in admission category is more subtle but equally significant
- The "exit option" of selling shares does not adequately substitute for informed consent on governance changes

1.2.3 Precedent and Market Practice

- SGX has required shareholder approval in comparable circumstances (Courage Marine Group 2016, China Kangda Food Company 2017)
- The requirement aligns with good governance principles around material changes to the company-shareholder compact

1.2.4 Proportionate Regulatory Burden

- Only 3 such changes identified over 3 years (FY22-FY25)
- High bar for admission as Foreign Exempt Listing ($200m profit test, $2bn assets/market cap) means only sophisticated entities affected
- Changes can be timed to coincide with AGMs to minimize costs

1.3 Implementation Considerations

1.3.1 Voting Threshold

We support ordinary resolution (50%+) rather than special resolution (75%+) for the following reasons:

- Consistent with most other Listing Rule approval requirements (LR 14.9)
- Special resolution threshold may be overly restrictive given shareholders retain trading access on ASX
- Board retains ability to maintain standard listing if concerns about approval prospects

1.3.2 Disclosure Requirements

Any rule change should specify minimum disclosure requirements in the notice of meeting, including:

- Detailed comparison of ASX Listing Rules vs. overseas home exchange requirements
- Specific identification of material differences in: continuous disclosure obligations, related party transaction rules, takeover and change of control protections, and corporate governance requirements
- Analysis of practical implications for Australian shareholders

1.3.3 Transition Provisions

- Appropriate grandfathering for any transactions in progress at the time of rule implementation
- Clear guidance on timing requirements (e.g., approval sought within 3 months of ASX consent)

2 Proposal 2: Shareholder Approval for Voluntary Delisting by Dual-Listed Entity

2.1 Position: STRONGLY SUPPORT (with proposed limitations)

We strongly support requiring shareholder approval for voluntary delisting by dual-listed entities, with the appropriate limitation to entities first listed on ASX.

2.2 Rationale

2.2.1 Fundamental Nature of Delisting Decision

Delisting from ASX represents a material strategic decision that affects:

- Liquidity and price discovery for Australian shareholders
- Access to Australian market depth and investor base
- Currency and timing convenience for local investors
- Perception and profile in Australian market

2.2.2 Limitations of "Exit Option" Rationale

While ASX's current policy relies on continued ability to trade on foreign exchange, this understates practical implications:

- **Liquidity fragmentation:** Australian investors may face reduced liquidity in foreign hours
- **Currency risk:** Increased exposure to FX fluctuations and conversion costs
- **Market access:** Some Australian investors face barriers (regulatory, platform, cost) to trading on foreign exchanges
- **Information access:** Reduced analyst coverage and media attention in Australian market
- **Time zone issues:** Trading foreign markets may be impractical for retail investors

2.2.3 Appropriateness of Differential Treatment

We strongly support ASX's proposed distinction:

- **Require approval:** Companies first listed on ASX, then added foreign listing
- **No approval required:** Foreign companies that added ASX as secondary listing

This is appropriate because:

For ASX-first companies:

- Original shareholder base invested on basis of ASX-listed status
- Australian market was primary source of capital and investor expectations
- Delisting represents fundamental departure from original corporate structure

- Australian shareholders have legitimate expectation of voice in this decision

For foreign-first companies:

- Investors understood foreign listing was primary from outset
- ASX listing was explicitly secondary/supplementary
- Governance expectations properly centered on overseas home exchange
- Avoiding approval requirement maintains attractiveness of secondary ASX listings

2.2.4 Competitive Considerations

The differential treatment appropriately balances:

- **Investor protection** for Australian shareholders who backed local companies
- **Market attractiveness** for foreign issuers considering ASX secondary listings
- Critical to maintain ASX competitiveness for foreign listings, particularly against NZX, SGX, and other regional exchanges

2.3 Implementation Considerations

2.3.1 Voting Thresholds

We support the proposed framework:

- **Ordinary resolution** for dual-listed entities maintaining foreign listing (appropriate as shareholders retain exchange access)
- **Special resolution** for entities with no alternative exchange (existing requirement remains appropriate)

2.3.2 Practical Matters

- Clear guidance needed on classification (which companies are "ASX-first" vs. "foreign-first")
- Should be determined by initial listing date rather than current primary listing
- Transition provisions for companies listed before rule implementation

3 Proposal 3: Bidder Shareholder Approval for Share Issues Under Takeovers/Mergers

3.1 Position: SUPPORT FRAMEWORK WITH MODIFICATION FOR SMALL COMPANIES

We support ASX's approach to limiting Exceptions 6 and 7 in Listing Rule 7.2 for large companies, but recommend a **waiver-based framework** for smaller entities rather than maintaining an automatic 100% exemption.

3.2 Support for Large Company Restrictions

3.2.1 Agreement with ASX Position

We **support** a 25% threshold for S&P/ASX 300 companies or entities with market cap >$300m, for the following reasons:

1. Appropriate Balance of Considerations

The 25% threshold properly balances:

- **Investor protection:** Material dilution (>25%) receives shareholder scrutiny
- **Board flexibility:** Smaller transactions (≤25%) remain efficient
- **Market competitiveness:** Board retains ability to move quickly on strategic acquisitions
- **International norms:** Aligns reasonably with TSX (25% for acquisitions) and is more permissive than HKEx/SGX (20% mandates)

2. Limited Market Impact

ASX's data demonstrates proportionate impact:

- Only 19 transactions by large companies over 5 years would have been affected (25% threshold)

- Represents ~3.5% impact on large company acquisitions requiring share issuance
- 55% of regulated M&A by large companies are already below this threshold

3. Sophistication of Large Companies

Large entities are better positioned to manage approval requirements:

- Professional boards and management teams experienced in shareholder engagement
- Established investor relations capabilities
- Resources to manage general meeting logistics and timing
- Better able to negotiate conditionality in transaction documentation
- More likely to have used placement capacity for capital raisings (requiring approval process)

4. Reduced Competitive Disadvantage

For large companies, shareholder approval requirement creates limited competitive disadvantage vs. private equity:

- Large companies typically have advantages in: access to debt financing, strategic value and synergies, currency for employee retention, regulatory approval and relationships
- Institutional shareholder base generally supportive of value-accretive M&A
- Approval process (4-6 weeks) manageable within transaction timeline

There are certain key disadvantages to introducing this requirement for shareholder approval:

- Increase execution risk and potentially reduces a target's willingness to engage with a bidder that will be subject to a shareholder vote
- Decreases the competitiveness of ASX-listed acquirors relative to foreign bidders who may not require shareholder approval, as well as unlisted companies.

3.3 Proposed Modification for Small Companies (sub $300m market cap / outside ASX300)

3.3.1 Recommendation: Waiver-Based Framework

Rather than maintaining automatic 100% exemption for smaller entities, we recommend ASX implement a **discretionary waiver mechanism** requiring companies to demonstrate specific circumstances warrant waiver relief.

3.3.2 Rationale

1. Protecting Minority Shareholders in Small Companies

Small company shareholders face heightened risks from dilutive M&A:

Information and Resource Asymmetry:

- Less sophisticated investor base with limited ability to assess transaction
- Reduced analyst coverage and independent research
- Fewer resources for independent advisors
- Less media scrutiny of transactions

Agency Risk Factors:

- Concentrated ownership structures more common
- Greater risk of controlling shareholder extracting private benefits
- Management incentives may not align with minority shareholders
- Less effective market discipline from institutional investors

Liquidity and Exit Constraints:

- Lower liquidity makes "exit option" less viable for dissenting shareholders
- Wider bid-ask spreads increase cost of exit
- Institutional investors may face practical barriers to exit at reasonable prices

2. Transaction-Specific Assessment More Appropriate

Small company M&A involves diverse circumstances:

- Some transactions genuinely require speed/flexibility (competitive auctions, distressed acquisitions)
- Others have no competitive urgency and would benefit from shareholder input
- Blanket 100% exemption treats all circumstances identically despite material differences

3. Existing ASX Waiver Framework Provides Suitable Mechanism

ASX already exercises discretion on Exception 6/7 waivers for foreign-regulated transactions:

- Established precedent for case-by-case assessment
- Criteria and process can be adapted for domestic transactions by small companies
- Allows flexibility while maintaining investor protection

An inclusion of this waiver-based approach should be subject to the ASX providing a clear framework as to how they will assess the waiver, as well as confirming there will be resources available to respond in a timely manner. An appeal process may also be considered, however to the extent this is included, a strict framework governing the process should also be developed.

3.4 Response to Consultation Questions

Question	Our Response
Q7	**Yes, for large companies (S&P/ASX 300 or market cap >$300m)**
Q8	**25% for large companies** is appropriate, balancing investor protection with commercial flexibility
Q9	**No** – implement waiver-based framework rather than automatic 100% exemption

4 Proposal 4: Security Holder Approval for Significant Transactions (Chapter 11)

4.1 Position: SUPPORT ASX'S APPROACH – NO CHANGE REQUIRED

We agree with ASX that changes to Listing Rule 11.1 or broader Chapter 11 amendments are not necessary or appropriate at this time.

4.2 Rationale

4.2.1 Proposed Changes Adequately Address Stakeholder Concerns

The combination of:

- Waiver disclosure requirements (implemented 2025)
- Proposal 3 changes to Exceptions 6 and 7
- Proposal 1 (Foreign Exempt Listing) and Proposal 2 (delisting) protections

...appropriately addresses the investor protection concerns that triggered this review.

The primary concerns raised by institutional investors related specifically to **equity dilutive acquisitions** (as evidenced by the James Hardie-Azek transaction catalyst). Proposals 1-3 directly target this issue.

4.2.2 Complexity and Disruption of Chapter 11 Changes

Expanding mandatory approval to all significant transactions (regardless of equity issuance) would involve:

Regulatory Complexity:

- Fundamental restructure of Chapter 11, disrupting long-established framework
- Interaction with LR 11.2 (disposal of main undertaking) requires reconciliation
- Interaction with LR 11.4 (disposal of major assets) requires reconciliation
- Risk of confusion between backdoor listing tests and transaction approval tests
- Significant drafting complexity to avoid unintended consequences

Implementation Burden:

- Much broader application than Proposal 3 (would affect 200+ transactions annually vs. ~19)
- Material increase in regulatory burden at time of heightened concern about public market attractiveness
- Creates friction in ordinary course M&A activity
- May discourage organic and strategic growth initiatives

Precedent and Principle Issues:

- Fundamental shift away from board primacy in strategic decisions
- Most comparable jurisdictions (NYSE, NASDAQ, TSX-V) don't require approval for acquisitions funded with existing resources
- UK/LSE framework focuses on equity issues, not all acquisitions
- Only HKEx/SGX have broad transaction approval requirements (25% thresholds)

4.2.3 Board Authority and Fiduciary Duties Provide Appropriate Framework

Current governance framework appropriately allocates decision-making:

Board Responsibilities:

- Directors have fiduciary duties to act in company's best interests
- Access to superior information and professional advice
- Expertise in assessing strategic fit and transaction execution
- Accountability through director elections and potential removal

Market Disciplines:

- Share price reaction to announced transactions
- Activist shareholder ability to challenge value-destructive deals
- Takeover market as discipline on poor strategic decisions
- Analyst and media scrutiny of major transactions

Shareholder Protections:

Existing approval requirements for:

- Disposal of main undertaking (LR 11.2)
- Related party transactions (LR 10.1)
- Equity issues over capacity (LR 7.1, 7.1A)
- Change of activities triggering backdoor listing test (LR 11.1.2)

5 Conclusion

Our Recommendations:

✓ **Implement Proposal 1** with clear disclosure requirements and ordinary resolution threshold

✓ **Implement Proposal 2** with differential treatment for ASX-first vs. foreign-first dual listings

✓ **Implement Proposal 3** for large companies at 25% threshold, but replace automatic 100% exemption for small companies with **waiver-based framework** requiring demonstration of specific circumstances

✓ **Support Proposal 4 approach** of no current changes to Chapter 11, with monitoring and review pathway

— End of Submission —

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