15 December 2025

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Shareholder approval of dilutive acquisitions and changes in admission status

Cbus welcomes the release of ASX's consultation on potential changes to Listing Rules governing shareholder approval requirements and admission status.

Background

Cbus Super is the leading industry super fund representing those that help build, maintain and shape Australia, providing superannuation and income stream accounts to approximately 925,000 members and managing over $105 billion of our members' money (as of 30 June 2025).

The Trustee believes that responsible investment is necessary to support sustainable long-term returns, and that responsible investment practices are consistent acting in the best financial interests of the Fund's members under its fiduciary duties and the sole purpose test. One of the Trustee's fundamental investment beliefs is that companies that are well-governed and manage Material ESG risks and opportunities in their operations and supply chains such as those that impact employees, suppliers, customers, communities and the environment, will help protect assets and grow our members' retirement savings over the long-term.

Submission overview

Mergers and acquisitions (M&A) have the potential to increase or decrease shareholder value. The James Hardie's acquisition of -Azek highlighted how the operation of -the Listing Rules can be dilutive to existing shareholders and lead to transactions that materially erode long-term shareholder value[1]. As such, it is our expectation that existing shareholders are afforded the opportunity to vote on any company-changing transactions that are material to our members' investment and that is fundamental to fair, transparent and trusted markets.

Cbus is broadly supportive of ASX's approach outlined in the consultation and acknowledge it both appropriately recognises investor concerns whilst offering meaningful amendments to address these concerns. Specifically, Cbus:

- Supports the introduction of shareholder approval requirements for a change of admissions category to ASX Foreign Exempt Listing (section 3) and for the voluntary delisting of a dual listed

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[1] This was reflected in the market response to the transaction, where James Hardie's share price dropped 14.5% on the day of announcement and to a total of over 30% within three weeks of the deal being announced.

entity (section 4) on the basis that there can be a material changes in shareholder rights and governance expectations.

- Strongly supports amending the Listing Rules to provide bidder shareholders with enhanced rights to approve share issuances that support takeover and mergers (section 5). In this regard we prefer that exceptions 6 and 7 be removed entirely to provide consistency, simplicity and strengthen shareholder rights. If retained, market practice from recent votes to amend a company constitution imply a 25% limit.

- Agrees with the ASX's proposal not to amend Listing Rule 11.1 now but to consider in future reviews. We also encourage ASX to consider introducing a periodic review of the Listing Rules going forward as a good practice.

Once the consultation process has been concluded, we support ASX to advance the timely implementation of a targeted response. We find value in the clarity that comes from amending Listing Rules rather than changing guidance or enforcement measures.

Cbus provides its details responses to the consultation question in Attachment A.

We look forward to our continued constructive engagement with ASX as it progresses these matters.

Appendix A: Detailed responses

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?**

   Cbus supports an amendment to the Listing Rules to require security holder approval for a change from ASX Listing to ASX Foreign Exempt Listing as this could otherwise lead to a material erosion in shareholders' rights and corporate governance expectations, depending on the company's primary listing market.

   We acknowledge there may be some administrative costs associated with progressing this to a shareholder vote. However, we agree with ASX that this does not place an unreasonable regulatory burden on dual listed companies given this is relatively infrequent, and we believe the benefits of having a vote on this material matter outweigh the minimal additional costs. The resolution could also be progressed as part of an annual general meeting too with minimum additional costs as an alternative to a special resolution for a change to Foreign Exempt Listing.

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

   Cbus has not identified any significant unintended consequences or other risks associated with this change that have not been considered in the consultation paper.

Shareholder approval for voluntary delisting of a dual listed entity

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

   As noted in the ASX guidance, an entity may voluntarily seek security holder approval for its delisting because it considers it both appropriate and a matter of good governance that security holders should be consulted on such a significant decision and one that can impact minority security holders that in some circumstances warrants approval by special resolution.

   Cbus supports an amendment of the Listing Rules to require security holder approval for the voluntary delisting of a dual listed entity. This would address our concern that, depending on the requirements of the other market, delisting could materially erode shareholder rights, weaken corporate governance expectations and therefore shareholder value.

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?**

   Cbus acknowledges the concerns raised that requiring shareholder approval for voluntary delisting could make ASX less attractive to foreign entities considering a dual listing since it introduces uncertainty and additional procedure if the entity seeks to then exit the ASX at some point in the future. Therefore, Cbus is comfortable that shareholder approval should not apply to an entity that was listed on a foreign exchange before listing on ASX. We assume that the governance expectations of companies initially listed overseas primarily continue to reflect the standards and regulatory environment of their home market.

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?**

   Consistent with our views elsewhere in this response, Cbus supports the introduction of a shareholder vote on this matter. Shareholder approval by ordinary resolution is an improvement

to the current position however a special resolution could be more appropriate given the potential impact to shareholder value where shares can only be traded in a jurisdiction with lower corporate governance standards and weaker shareholder right provisions. If an entity's securities are not, and will not be traded on another exchange, then no changes are required.

6. **Are there any 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?**

   Cbus has not identified any significant unintended consequences or other risks associated with this change that have not been considered in the consultation paper.

Bidder shareholder approval of share issuers 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?**

   We acknowledge the complexities associated with any changes to the exceptions; however, Cbus would prefer that exceptions 6 and 7 be removed entirely. As a result, the reference rule would revert to the standard 15% limit for such transactions that would provide consistency, simplicity, and strengthen shareholder rights. The James Hardie – Azek transaction alongside other examples such as Perpetual's acquisition of Pendal, demonstrates that the current Listing Rules can otherwise allow an ASX-listed company to significantly dilute shareholders' interests without their vote in the case of takeovers or mergers involving substantial equity issuances, notwithstanding the provisions in the Rules that issues exceeding 15% should be subject to approval.

   If exceptions 6 and 7 are to be retained, Cbus would support a substantial reduction in the current limit from 100% to for example 25%. This would be a positive development that could materially address issues related to shareholder rights which emerged in the James Hardie – Azek transaction.

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

   Cbus supports ASX's initial position to reduce the limit from 100% to 25% of ordinary securities on issues at the date of announcement of the transaction to strengthen accountability to shareholders. The vote outcome of a resolution at Orora Limited and Sim Limited to amend the relevant company constitution in response to current Listing Rules and the James Hardie – Azek transaction, imply broad market consensus for a 25% limit. We have reservations that the higher limits suggested may not achieve the desired outcomes.

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)?**

   As a long-term investor on behalf our members, Cbus is invested across the listed market. In the absence of clear rationale for having different limits, we would favour an approach that applies the same limit across the market for consistency and simplicity in application, recognising that smaller entities already have additional flexibility to issues shares up to the 25% cap without shareholder approval.

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?**

    Cbus recognises that a requirement for shareholder approval could increase transaction execution risks for listed bidders at the margin but does not believe it to be a significant barrier to executing transactions, takeovers and mergers, which are in the best financial interests of the

shareholders. The experience in comparable markets (NYSE, NASDAQ, TSX, HKEx and SGX) indicates that shareholder approval requirements do not appear to be a significant barrier to these transactions.

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?**

    Cbus acknowledges some additional costs associated with seeking shareholder approval of a transaction including those related to administrative or advisory costs. However, these costs can be considered minimal when assessed against the potential value destruction experience from the James Hardie – Azek transaction. We also believe that these votes would only be required in a limited number of transactions and positively strengthen shareholder rights.

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?**

    Since some jurisdictions do not necessarily provide the same level of shareholder protections to those available under Australian law, Cbus has some reservations over ASX's practice to grant waivers that allow exemptions from shareholder approvals where transactions occur in foreign markets. However, we recognise that a reduced limited under exceptions 6 and 7 would materially mitigate these risks. On the basis that the limits on issues of securities without approval under exceptions 6 and 7 is reduced to 25% as proposed, Cbus is comfortable with ASX's continued approach to offering waivers to extend exceptions to transactions that fall under foreign law.

    Looking forward, Cbus finds value in ASX reviewing its process for providing waivers to international transactions. This could include the development of clear and transparent criteria to judge whether regulatory regimes are considered equivalent to the Corporations Act. We suggest that this be considered in future so as to not impact the proposed Listing Rule reforms this Consultation Paper considers.

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?**

    Cbus has not identified any significant unintended consequences or other risks associated with this change that have not been considered in the consultation paper.