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Your reference

Our reference

AUM/1302236345

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By email: ListingsPolicy@asx.com.au

Dear Andrew

Public consultation on shareholder approval requirements under the ASX Listing Rules

We refer to the consultation paper released by the Australian Securities Exchange (**ASX**) on 20 October 2025 titled '*Shareholder approval of dilutive acquisitions and changes in admission status*' (**Consultation Paper**).

The changes proposed in the Consultation Paper will have a significant impact on ASX-listed entities. DLA Piper acts for a number of ASX-listed entities and we consider that our experience and involvement with these clients places us in an ideal position to provide practical comments on ASX's proposals.

Our response to the consultation questions in relation to each of ASX's proposed changes is set out below.

1 Change of admission category to ASX Foreign Exempt Listing

1.1	Should security holder approval be required for a change in admission category from ASX Listing to ASX Foreign Exempt Listing?
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No. The Board of an issuer is best placed to determine whether security holder approval should be sought for a change in admission category.

In our experience, many foreign issuers (particularly US domiciled issuers) list on the ASX as a pathway to a dual listing on another exchange (often Nasdaq or NYSE).

Mandatory shareholder approval should not be required if the issuer's foreign listing is on a well-regulated, accessible and active exchange, and the IPO prospectus appropriately discloses that:

- the issuer could list on another acceptable foreign exchange and change its admission category to a foreign exempt listing;
- a change of admission category to a foreign exempt listing would mean that a number of ASX Listing Rules would cease to apply.

1.2	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?
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See response to question 1.1.

2 Shareholder approval for voluntary delisting by a dual listed entity

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

No. The Board of an issuer is best placed to determine whether security holder approval should be sought for a delisting.

In our view shareholder approval should not be required for an entity to delist from the ASX if the company maintains a listing on a well-regulated, accessible and active exchange.

2.2 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?

See response to question 2.1.

2.3 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?

See response to question 2.1.

2.4 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?

See response to question 2.1.

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

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

No. The current limit should be retained. Our reasoning is articulated in questions 3.4 and 3.5 below.

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

There does not appear to be a clear policy basis for a drastic reduction to 25%. If the limit is reduced, we consider a more moderate threshold of at least 50% to be more appropriate, and for the reduced limit to only apply to larger entities. This generally preserves flexibility for bidders wishing to pursue scrip acquisitions other than in the more controversial near-merger of equals transactions. It also better reflects the will of the bidder shareholders as that percentage could requisition a meeting and in practice pass a resolution to amend the Constitution to cap share issuances.¹

¹ According to [MUFG Corporate Markets](#), a prominent Australian shareholder analysis provider, shareholder attendance / voting turnout at annual general meetings in 2024 was 66.48% for companies in the S&P/ASX 100, 66.74% for companies in the S&P/ASX 200 and 62.27% for companies outside of the S&P/ASX 200.

3.3 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, if any change is made at all, the current limit should at least be kept for entities outside the S&P/ASX 300. This is particularly because the cost of complying with a reduced limit is disproportionately higher for smaller companies - the process to obtain shareholder approval is the same regardless of company size so while the absolute cost may be similar, its impact is greater for smaller entities with limited resources.

3.4 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. Reducing the limit would create significant practical and strategic problems for ASX-listed bidders, undermining their ability to compete and execute takeovers and mergers. The key problems include:

- **(Execution risk and uncertainty)** Additional conditionality creates additional uncertainty, and targets are less likely to engage with bidders whose offers are contingent on a vote and whose timetables may be delayed as a result, particularly in competitive situations. This puts ASX-listed bidders at a competitive disadvantage.
- **(Distorted negotiation dynamics)** To compensate for execution risk, bidders may be forced to concede unfavourable or out-of-market terms. Targets may demand additional protections such as higher reverse break fees, increased consideration, or larger cash components - eroding the efficiency of scrip-based funding and weakening the bidder's negotiating position.
- **(Impact on deal structure)** Bidders may resort to complex or fragmented structures to stay within the reduced limit, adding complexity and reducing transparency. Alternatively, they may pivot to debt-heavy funding, which increases financial risk and undermines long-term value creation.
- **(Restricted board responsibility)** Introducing bidder shareholder approval undermines a board's role and responsibilities. It also restricts a board's ability to act quickly and efficiently in fast-moving M&A markets, which could result in missed strategic opportunities.

3.5 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?

In our view, the proposed reforms deliver minimal incremental benefit at disproportionate cost to market efficiency and competitiveness. The potential costs arise directly from the problems outlined in our response to Question 3.4 and include:

Direct Costs

- convening a bidder shareholder meeting and associated proxy solicitation;.
- preparing additional transaction documentation and explanatory materials;
- significant administrative and adviser fees;
- increased costs of offering more attractive terms to offset uncertainty, including:
 - higher reverse break fees as targets demand greater protection against deal failure;

- increased consideration or larger cash components; and/or
- additional deal protection mechanisms;
- increased borrowing costs for debt-funding pivots, which raise financial risk for the bidder and its shareholders; and
- potential additional costs in schemes of arrangement, including extra bidder evidence, affidavits, and procedural steps.

Indirect Costs

As ASX notes in its 2017 response to its consultation paper on shareholder requirements for listed company mergers, some of the potential indirect costs of imposing a shareholder approval requirement include:

- longer timetables and reduced certainty to complete transactions;
- reduced flexibility for bidders to vary offer terms without triggering further approvals;
- sub-optimal structuring, such as replacing scrip with cash or debt, increasing cost and financial risk and potentially depressing long-term value creation due to higher leverage;
- weakened negotiating position as bidders must explain to its shareholders why the transaction is in their best interests, and may need to concede unattractive terms; and
- deals failing or being vetoed by strategic shareholders for reasons that do not reflect the interests of all shareholders.

Additional potential indirect costs include:

- fewer scrip-based deals, even where scrip is the most efficient funding method and aligns shareholder interests – undermining one of the original rationales for Exceptions 6 and 7; and
- knock-on effects for market competitiveness as a result of a listed bidder's competitive disadvantage, including reduced deal flow and ASX becoming less attractive as a venue for corporate control.

The purported benefit (being greater shareholder protection against dilution) is already achieved through existing frameworks: directors' fiduciary duties (including the requirement to have regard to the interests of the company and shareholders as a whole) and statutory shareholder rights (including the right to remove directors, call meetings, vote on remuneration, etc). Ultimately, while greater bidder shareholder involvement may sound appealing in theory, in practice it risks making ASX-listed bidders second-choice partners for target boards.

3.6 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. A pragmatic approach to cross-border transactions should be taken where the exceptions can also apply to acquisitions regulated by foreign regimes. As flagged in the consultation paper, ASX listed companies operate in a global market and a blanket ban on waivers to rely on exceptions 6 and 7 in relation to a takeover or merger of a foreign company would unnecessarily stifle global competition and put Australian bidders at a structural disadvantage in cross-border transactions.

3.7 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?

No. Our view is that the risks have been sufficiently canvassed by the consultation paper.

Thank you for your further consideration of this matter.

Yours sincerely



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