

TO Andrew Campion
General Manager, Investment Products and Strategy
ASX Limited
39 Martin Place
SYDNEY NSW 2000

By email: Andrew.campion@asx.com.au

15 DECEMBER 2025

Dear Mr Campion

Consultation: Shareholder approval of dilutive acquisitions and changes in admission status

King & Wood Mallesons welcomes the opportunity to comment on ASX Limited's ("ASX") public consultation paper on shareholder approval requirements under the ASX Listing Rules dated 20 October 2025 (the "Consultation Paper").

We note the response to the Consultation Paper which has been submitted by the Corporations Committee of the Business Law Section of the Law Council of Australia (the "LCA Response").

We fully support the LCA Response. We have set out below our additional observations.

Observations on ASX Listing Rule and Australian corporate governance settings

We endorse ASX's view that care should be taken before changing rule settings that have been in place for decades.¹ We agree that the risk of unintended consequences can be high and costly, and the regulatory burden on ASX-listed entities needs to be assessed holistically in the context of the costs for business, shifting dynamics between public and private markets, and global competition between securities exchanges.²

We strongly disagree with statements made in the media by certain market participants that "third-world countries" have better protection for shareholders than in Australia or on ASX.³ This is without basis. Hyperbole is not the basis for balanced debate or changes to rule settings.

Additional observations on potential changes to ASX Listing Rule 7.2

We note ASX's comment in the public consultation that, if it decides to further limit exceptions 6 and 7 to ASX Listing Rule 7.2, it will conduct a further public consultation on an exposure draft of the proposed amendments including "voting exclusions and information requirements to more substantive matters such as whether any flexibility would be provided to allow for increases in bid consideration without seeking further security holder approval".⁴

¹ Consultation Paper at page 5.

² Overseas corporate governance settings also continue to evolve. Very recently, the President of the United States of America issued an Executive Order impacting the role of proxy adviser and other market participants in shareholder approval and other corporate governance matters: see "Protecting American Investors From Foreign-Owned and Politically Motivated Proxy Advisors" (December 11, 2025) available [here](#).

³ *Australian Financial Review*, "Fury over James Hardie deal won't die. This fundie has taken a stand" (September 12, 2025).

⁴ Consultation Paper at page 20.

There is a risk of unintended consequences in the new potential rule changes. Therefore, we strongly support a further public consultation on these and other matters including:

- **Timing:** the extent to which shareholder approval obtained by an ASX-listed bidder will ‘lapse’ for the purposes of Listing Rule 7.3.4 (noting a 6-month period is permitted for reverse takeovers);
- **Voting commitments and voting intention statements:** whether current policy settings in relation to shareholder voting commitments and voting intention statements are clear and appropriate in the context of increased ASX-listed bidder shareholder approval requirements; and
- **Reverse break fees:** the extent to which an ASX-listed bidder may agree to a reasonable break fee if it does not obtain shareholder approval (analogous to the guidance at paragraph 6.2 of ASX Guidance Note 12).

Additional observations on potential changes to ASX Listing Rule 11

We agree with the LCA Response that no coherent basis for changing ASX Listing Rule 11 has been articulated. In addition, in our view:

- Any changes would impose an undue additional governance and compliance burden on ASX-listed entities. ASIC, in its reports into Australia’s public and private markets, acknowledges the challenge of ensuring public markets are attractive for listing, and for staying listed, and recognises a similar story globally. Tightening ASX Listing Rule 11 would be out of step with international counterparts, some of which have relaxed shareholder approval requirements.⁵
- The changes delve into areas which are, and should be, within the realm of directors, having regard (among other things) to directors’ fiduciary and statutory duties and the fact that directors are likely to have better information about such transactions than shareholders. The basis of company law in Australia is that shareholders own the company, however directors and management run it, and are accountable for breaches of their fiduciary and statutory duties.
- Significant acquisitions and divestments are part of the strategic tools available to ASX-listed entities and Boards. Implementing a blanket requirement for shareholder approval will stifle inorganic growth strategies, such that the productivity gains from those strategies may be lost.

We welcome the opportunity to discuss our views further. If you would like further information, please contact any of the M&A team members listed below.

Yours sincerely

King & Wood Mallesons

David Eliakim (Practice Leader - M&A)	Nicola Charlston	Will Heath	Joseph Muraca
David Friedlander (Chair, Australia)	Daniel Natale	Antonella Pacitti	Diana Nicholson
Paul Schroder	Anthony Boogert	Mark Vanderneut	Henrik Moritz
Tim Bednall	Amanda Isouard	Stephen Minns	Sam Dimopoulos

⁵ *Shareholder approval of dilutive acquisitions and changes in admission status: Public consultation on shareholder approval requirements under the ASX Listing Rules* (20 October 2025), at page 28 illustrates how ASX’s approach on Listing Rule 11 aligns with, or is stricter than, various counterpart exchanges including the NYSE, LSE and TSX. Changes to the UK Listing Rules implemented in July 2024 relaxed the circumstances in which shareholder approval must be obtained for significant transactions, see: <https://www.fca.org.uk/news/press-releases/fca-overhauls-listing-rules-boost-growth-and-innovation-uk-stock-markets>.