McCabes

Our ref: RXS:79657

27 July 2026

Attention: Gavin R. Skene, Acting Group Executive, Listings

ASX Limited
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Sydney NSW 2000

By email: ListingsPolicy@asx.com.au

Dear Mr Skene

Response to public consultation and exposure draft of ASX Listing Rule amendments

Below are responses to the numbered questions contained in ASX response to consultation paper titled 'Shareholder approval of dilutive acquisitions and changes in admission status' dated June 2026 (**Response to Consultation Paper**).

1. **Operation and interactions: Are there any interactions with other ASX Listing Rules or Guidance Notes that ASX should address to ensure the amended framework operates clearly, consistently and as intended in practice?**

   <u>Takeover and Regulated Takeover or Merger Overlap</u>

   The proposed definition of "regulated takeover or merger" substantially overlaps with the existing defined term "takeover".

   The existing definition of *takeover* captures both:

   - a takeover bid; and

   - a similar bid under the laws of a foreign jurisdiction.

   The proposed definition of *regulated takeover or merger* also captures takeover bids under the Corporations Act and appears intended to extend to analogous foreign transactions through paragraph (c).

   Given the introduction of the broader *regulated takeover or merger* definition, ASX may wish to reconsider the continued utility or scope of the standalone *takeover* definition. In particular, it is not immediately apparent from the proposed amendments why both definitions are required, or how they are intended to operate distinctly within the Listing Rules. Clarifying the relationship between the two concepts may assist in avoiding unnecessary duplication and potential interpretive uncertainty.

   We also note that paragraph (c) of the proposed definition refers to a "takeover or business combination" in a foreign jurisdiction, rather than using the defined term *takeover*. While we acknowledge that Listing Rule 19.12 provides that undefined terms generally adopt the meaning given in the Corporations Act where applicable, the existence of a separately defined *takeover* term in the Listing Rules creates some uncertainty as to whether paragraph (c) is intended to capture:

- the same category of transactions as the existing *takeover* definition;
- a broader class of foreign transactions; or
- a concept having some other intended distinction.

For drafting consistency and certainty, ASX may wish to consider whether the relationship between these defined terms could be more clearly articulated.

Foreign Jurisdictions

The proposed definition of "regulated takeover or merger" in paragraph (c) appears to extend the concept beyond transactions that would traditionally constitute a *takeover bid*, to include a broader range of foreign business combination structures effected through prescribed public offer, exchange-supervised or court/regulator-approved processes.

Some foreign jurisdictions may adopt disclosure, voting, related party and minority protection regimes that differ materially from those applying to Australian takeover bids and schemes of arrangement. This issue may be even more acute where the listed entity is not an Australian company, so there are no Australian law protections that would otherwise apply even though the takeover was under foreign law (eg. related party transactions provisions in Chapter 2E, which would apply if the listed entity was Australian-incorporate, but not otherwise).

Perhaps further consideration of whether the exception should automatically apply to all foreign takeovers or mergers (provided they are within the terms of paragraph (c)) is warranted.

2. **Definitions and drafting clarity: Are the key definitions and concepts used in the draft amendments clear, objective and administrable? If not, are there targeted drafting refinements that would improve clarity without introducing additional complexity?**

Prescribed Transaction Phrasing

The defined term "prescribed transaction" may create ambiguity. The adjective "prescribed" is used consistently and appropriately in the separate defined term "prescribed threshold" to denote a threshold specified by the Listing Rules. However, a "prescribed transaction" is not itself prescribed; rather, it is a transaction that exceeds the prescribed threshold and thereby attracts additional shareholder approval requirements. Consideration could be given to adopting a term that more directly reflects the context in which the definition is applied.

Prescribed Transaction and Reverse Takeover

There seems to be unnecessary crossover between the definition of "regulated takeover or merger" in both the "prescribed transaction" and "reverse takeover" definitions. Noting the definition is used in both, we recommend making the following definitional changes (suggested changes shown in tracking).

prescribed transaction

a +regulated takeover or merger ~~where~~ by an entity that is included in the S&P / ASX 300 Index ~~is proposing to acquire (or increase its proportionate interest in) securities of another body and the~~where the aggregate number of +equity securities issued or to be issued by the entity:

- under the +regulated takeover or merger; and/or
- to fund the cash consideration payable under the +regulated takeover or merger,

is equal to or greater than the +prescribed threshold of the number of fully paid +ordinary securities on issue in the entity at the date of announcement of the +regulated takeover or merger. Separate issues may be aggregated if, in ASX's opinion, they form part of the same commercial transaction.

reverse takeover

a +regulated takeover or merger ~~where~~ by an entity ~~is proposing to acquire (or increase its proportionate interest in) securities of another body and~~where the aggregate number of +equity securities issued or to be issued by the entity:

- under the +regulated takeover or merger; and/or

- to fund the cash consideration payable under the +regulated takeover or merger,

is equal to or greater than the number of fully paid +ordinary securities on issue in the entity at the date of announcement of the +regulated takeover or merger. Separate issues may be aggregated if, in ASX's opinion, they form part of the same commercial transaction.

The proposed drafting makes appropriate use of the defined term, improving consistency and reducing duplication within the body of the rule.

Prescribed Threshold Priority Ambiguity

The proposed definition of "Prescribed Threshold" establishes a default threshold of 25% under paragraph (a), which may be increased either:

- by approval of holders of the entity's ordinary securities under proposed Listing Rule 7.3B (paragraph (b)); or

- through a higher threshold specified in the entity's constitution for the purposes of the Listing Rules (paragraph (c)).

While the operation of each limb in isolation is reasonably clear, the interaction between paragraphs (b) and (c) could benefit from further clarification.

As currently drafted, the definition does not appear to establish a clear hierarchy where both paragraph's (b) and (c) apply and prescribe different thresholds. In those circumstances, it is not immediately apparent which percentage is intended to constitute the relevant prescribed threshold.

By way of example, if an entity's constitution specifies a prescribed threshold of 50%; and shareholders subsequently approve a prescribed threshold of 65% under Listing Rule 7.3B, it is unclear whether the applicable prescribed threshold would be 50% under paragraph (c), 65% under paragraph (b) or the higher of the two thresholds. Similar uncertainty arises where a constitutional threshold exceeds a threshold approved under Listing Rule 7.3B.

While a particular outcome may be intended as a matter of policy, that outcome should be apparent from the drafting itself.

More fundamentally, the proposed drafting does not make clear whether ASX intends the constitutional threshold to have primacy over a threshold approved under Listing Rule 7.3B, a Listing Rule 7.3B approval to override the constitutional position, the higher threshold to apply in all circumstances, or some other manner.

We suggest ASX consider expressly addressing the priority between these limbs.

If ASX's policy objective is to ensure that the most permissive threshold always applies, the definition could be redrafted as follows:

the highest of:

(a) 25%;

(b) any percentage (less than 100%) approved by holders of the entity's +ordinary securities under rule 7.3B; and

(c) any percentage (less than 100%) set out in the entity's constitution for the purposes of these rules.

3. **Post-approval issuance timing Listing Rule 7.3.4 currently applies different time limits for issuing securities following shareholder approval depending on the transaction type. Should the post-approval issuance period be standardised across approvals to a 12-month period for all approvals under Listing Rules 7.1 and 7.4?**

<u>Listing Rule 7.3B and 7.3.4</u>

We have considered the proposed 36-month validity period in Listing Rule 7.3B.3. Prescribed transactions are often significant and complex transactions that may involve lengthy negotiation periods or settlement timeframes. In that context, a shorter validity period could result in shareholder approval of a higher prescribed threshold becoming ineffective before a contemplated transaction has been completed, potentially requiring shareholders to revisit and reapprove the same threshold notwithstanding no material change in circumstances. We therefore consider the proposed 36-month period appropriately supports transactional certainty while maintaining appropriate shareholder oversight.

In relation to Listing Rule 7.3.4, however, it is not immediately apparent why different post-approval issuance periods apply to securities issued under, or to fund, a reverse takeover (6 months) and a prescribed transaction (12 months). Both transaction types appear to share similar characteristics that may justify an extended implementation period. In that context, the policy basis for affording prescribed transactions a 12-month issuance period, while limiting reverse takeovers to 6 months, is not clear.

We therefore suggest that the post-approval issuance period be standardised at 12 months for securities issued under, or to fund, both reverse takeovers and prescribed transactions. This would simplify the operation of Listing Rule 7.3.4, promote consistency within the proposed framework and reduce the need for entities to seek further shareholder approvals where implementation timelines extend beyond six months.

Yours faithfully
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