



OWNERSHIP MATTERS

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25 November 2025

Attention: Andrew Champion
ASX Limited
39 Martin Place
Sydney NSW 2000
Email: andrew.champion@asx.com.au

RE: Public Consultation on shareholder approval requirements under the ASX Listing Rules

Dear Mr Champion,

Thank you for the opportunity to comment on the consultation paper on *Shareholder approval of dilutive acquisitions and changes in admission status*. Ownership Matters (OM), formed in 2011, is an Australian owned governance advisory firm serving institutional investors. This submission represents the views of OM and not those of its clients.

OM generally supports the ASX's policy positions advanced in the paper to:

- Require securityholder approval to change from a primary ASX listing to an ASX Foreign Exempt listing;
- Require securityholder approval for voluntary delisting of dual listed entities; and
- Impose a limit of 25% on the number of securities that can be issued without approval in regulated takeovers or mergers.

We address these in order of the issues raised in the consultation paper.

Foreign exempt listing

A shift of primary listing can result in a permanent alteration of the rights of securityholders as there may be clear and material differences between the listing rules of the ASX and the nominated foreign exchange.

In the case of James Hardie's stated ambition to shift its primary listing to NYSE, this would have resulted in substantial detriment to James Hardie shareholders. If James Hardie had been successful in applying for a Foreign Exempt Listing under the existing Listing Rule 1.15¹, the ability of shareholders to hold management and the board accountable for poor performance would have been diminished. For example, under NYSE rules, James Hardie would be able (amongst other things) to issue equity to insiders without shareholder approval, issue stock as a frustrating device during a takeover and potentially introduce dual class shareholdings.

The effect of ASX Listing Rule 15.11 is that all ASX listed entities must have a constitution that is consistent with and affords primacy to the Listing Rules. Investors rely on the rights and protections bestowed on them under the Listing Rules when they choose to invest in an ASX

¹ James Hardie made an announcement on 28 April 2025 that its current policy is that it would not seek to change without a shareholder vote.

listed security. The practical effect is that these rights and protections are 'quasi-constitutional' by virtue of LR 15.11. Constitutional change can only be excepted by a special resolution (75% majority) approved by securityholders.

It is absurd that those rights could be swept away without reference to securityholders, presumably in reliance on the circular and tortured reasoning that Foreign Exempt Listings are permitted on 'application' under Listing Rule 1.15.

Accordingly in relation to the questions posed in the consultation:

1. Should security holder approval be required for a change in admission category from ASX Listing to ASX Foreign Exempt Listing?

Yes. OM supports this being implemented by a change to the Listing Rules, so that there is total certainty for securityholders and that their rights cannot be diminished by the ASX's subjective interpretation of its own 'guidance'.

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?

Change to a Foreign Exempt Listing has the practical effect of changing securityholders constitutional rights as LR 15.11 is not one of 'continuing requirements' of the ASX Listing Rules that would continue to apply².

Given the significance of such a change, we believe that a resolution to change admission category to ASX Foreign Exempt Listing should be a special resolution rather than an ordinary resolution. Typically, special resolutions are required for constitutional changes and require 75% approval of securityholders³.

It would be inconsistent to allow a change to Foreign Exempt Listing status by way of ordinary resolution, if that status could eliminate securityholder protections under the Listing Rules that require a special resolution or subject securityholders to conduct under the rules of a new foreign exchange (e.g dual class shareholdings) that would not be permitted at all by the ASX.

Voluntary delisting by dual listed entities

If an entity trading on the ASX has Foreign Exempt Listing status, the ASX's Guidance Note 33, *Removal of Entities from the ASX Official List*, makes it clear that the ASX will strongly consider approving delisting from the ASX without shareholder approval.

For an entity that has always been an ASX Foreign Exempt Listing, this makes sense. In this circumstance, there should be no requirement to obtain shareholder approval to delist. The rules of the primary exchange should apply and the risks of being delisted under that regime should be well known and can be priced by investors accordingly.

In the event that ASX approves the rule change suggested above (a special resolution to change admission category to Foreign Exempt Listing), and the securities are tradeable on the primary exchange, then we believe that no further approval for delisting is needed. The shift to Foreign Exempt Listing is far more consequential for securityholder rights than delisting. As we have submitted above, securityholders at the time of granting approval will be able

² See Guidance Note 4, Pt 2.10

³ For companies at least under S 136 of Corporations Act

to consider the risks of being delisted under the rules of both exchanges and a high approval threshold will have been obtained.

However Foreign Exempt Listings that propose to delist with securities that are not, and will not be, readily able to be traded on another exchange should be compelled to seek securityholder approval. The lack of liquidity is substantial detriment to Australian securityholders and delisting potentially to a private, foreign unlit market without any protection of alternative listing rules at legitimate recognised exchanges, compounds these risks. The effect of delisting in these circumstances has the practical effect of permanently changing the rights of securityholders. In these circumstances approval by special resolution, consistent with the ASX's existing policy⁴, is appropriate.

OM favours a rule change to this effect – to clarify the ASX's position rather than relying on the interpretation of Guidance Note 33.

Accordingly in relation to the questions posed in the consultation:

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

If a special resolution is required for an ASX entity to change its admission status to Foreign Exempt Listing, then securityholder approval should only be required in the event that an entity seeks to delist and its securities are not readily tradeable on its primary exchange. In that circumstance a special resolution should be required and this should be effected by a listing rule change.

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?

If securityholder approval has already been obtained by special resolution to change admission status to Foreign Exempt, then generally no further approval should be required.

5. If securityholder 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?

Yes, the exception should be in the case where an entity's ordinary securities are not readily able to be traded on another exchange. In those cases, a special resolution should be required and this should be effected by a rule change.

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?

In the unsatisfactory event that an ordinary resolution is required to change an entity's admission status to Foreign Exempt Listing, then OM's view is that further approval to delist should be required in all circumstances. This is because the approval threshold that exposed securityholders to the risk of delisting under the rules of the foreign exchange is lower.

⁴ For example, ASX listed Updater (ASX:UPD) obtained approval to delist without an alternate exchange on 7 Sept 2018 by ordinary resolution (with insiders not able to vote). It said it planned "to consider listing on a US exchange in the future". It has not traded anywhere since.

There may be circumstances where currently Foreign Exempt Listings were first listed on the ASX and have changed status without implicit or explicit shareholder approval. OM is unaware of a material number of these entities in the ASX 300 and it would seem unreasonable to impose a further requirement to obtain shareholder approval to delist, except in the circumstances referred to above.

Bidder shareholder approval of share issues for takeovers and mergers

In relation to Listing Rule 7.1 (and the exceptions within Listing Rule 7.2), we think that it is unreasonable that ASX listed entities are able to issue a large amount of securities as part of domestic or foreign mergers and acquisitions, without a shareholder vote.

The flow-on effect of this type of transaction occurring is that an ASX listed entity is able to significantly dilute and change the existing securityholder base, and (in the case of foreign mergers and acquisitions) take steps to shift the listing jurisdiction, thereby fundamentally altering securityholder rights.

Once the securities have been issued to new holders, the ability of existing holders to hold directors accountable for destroying value is diminished.

The existing policy that focuses solely on preventing arbitrarily described 'reverse takeovers' is insufficient and requires amendment to allow entities to expand their capital base through transactions but not transgress a basic requirement that existing securityholders ought not be diluted excessively without their consent.

We endorse ASX's position to align itself with best practice in other jurisdictions where securityholders must approve transactions which involve an issuance beyond specified thresholds as part of any transaction. This is consistent with the primary purpose of Listing Rule 7.1 which prevents dilution of more than 15% in any rolling 12-month period without securityholder approval.

We do not believe there is a compelling rationale for maintaining the current Australian position of allowing an exception for issuances for schemes and foreign takeovers (or, through waiver, equivalent transactions in other jurisdictions) as other jurisdictions which do not allow this exception still maintain competitive public market transaction processes.

Accordingly in relation to the questions posed in the consultation:

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

Yes.

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

25%.

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)?

It makes little sense to treat entities outside the S&P/ASX 300 differently. Note that those entities, under Listing Rule 7.1A have the capacity to approve issuance of up to 25% of current securities if securityholders approved that cap.

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?

Yes, it would make it more difficult for transactions to proceed, where those transactions unnecessarily diluted securityholders and those securityholders were not convinced about the price or strategic rationale of those transactions. If deals are well thought out and the price paid is appropriate, swift endorsement will follow.

No doubt this question will solicit the 'feelpinions' of the transaction industry, whose livelihoods may feel threatened by introducing this modest rule. However, there is no serious academic research that quantifies the negative effect of imposing a limitation on dilution in this fashion. The radiant health of the US capital markets (NYSE & NASDAQ) where a 20% issuance cap applies suggests that there are no material competitive detriments.

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?

Consider the case of James Hardie, where the issuance of 35% of existing shares to Azek shareholders caused the share price to fall from the pre-deal price of ~A\$50 to A\$27 today, a detriment of approximately \$13 billion in market capitalisation. If the rules as proposed were changed, then shareholders could have voted down the transaction (subject to paying a break fee of \$200m) and used their undiluted shareholding power to remove existing directors and appoint a new board. James Hardie shareholders would have willingly paid a break fee even higher than that specified to avoid such a terrible transaction.

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?

If a hard 25% issuance cap is implemented, this question is not relevant. Our principal concern is with dilution limits. If the ASX accedes to the bleating of the transaction industry and imposes a higher cap, then then exceptions should be limited to Australian law only. It is incongruous that jurisdictions like Papua New Guinea are considered comparable jurisdictions for the purposes of these exceptions.

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?

There may be an impact on Mosman property prices, given that unnecessary, ill-conceived and value destroying transactions may not proceed, thereby impacting on the bonuses of investment bankers, and in turn the prices that might be paid for gauchely decorated mansions with harbour views.

Security holder approval for change to nature or scale of activities under Listing Rule 11.1

OM does not accept the premise that a change to Listing Rule 11.1 would be an effective way to address the excessive dilution that currently occurs under exceptions 6 and 7 in Listing Rule 7.2.

Listing Rule 11.1 has been refashioned as a regulatory device to guard against so-called 'back door' listings and has been progressively interpreted by ASX through Guidance Notes in this manner.

There may be a case to revisit whether Listing Rule 11 should be returned to the purpose for which it was originally conceived, namely:

- To protect the integrity of the market by ensuring that a listed entity does not change so radically (in nature or scale) that its existing listing (and therefore the basis on which investors have valued it) becomes misleading.
- To ensure that shareholders and the market have adequate disclosure and an opportunity to vote where appropriate when a company transforms or materially changes direction.
- To maintain confidence in the listing regime by requiring compliance when the nature/scale shift is big enough that the entity could effectively become a different company (in effect requiring re-listing)

Such a debate is beyond the scope of this consultation.

Please feel free to contact us concerning any aspect of our submission. For the avoidance of doubt we are happy for our submission to be made public.

Yours sincerely,

Handwritten signatures of Dean Paatsch and Martin Lawrence in cursive script.

Dean Paatsch & Martin Lawrence

Ownership Matters Pty Ltd