



Public consultation on shareholder approval requirements under the ASX Listing Rules

UNISUPER SUBMISSION TO ASX
12 DECEMBER 2025

UniSuper welcomes the opportunity to provide feedback to ASX on its public consultation on shareholder approval requirements under the ASX Listing Rules. We appreciate ASX's role as a financial markets operator and the importance of the Listing Rules in promoting the confidence of both listed entities and investors.

As one of Australia's largest superannuation funds, UniSuper is a significant investor in companies listed on ASX. We are an active investor with extensive engagement with many of Australia's leading listed companies. Our engagement covers all aspects of environmental, social and governance (ESG) considerations. We seek to exercise our voting rights at company AGMs to ensure governance supports sustainable performance and to communicate our stance on specific issues.

ASX has raised four issues for public consultation and asked 13 consultation questions. Our feedback on the issues raised in the consultation and our answers to each consultation question are set out below.

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ISSUE 1: SHAREHOLDER APPROVAL FOR A DUAL LISTED COMPANY TO CHANGE TO ASX FOREIGN EXEMPT LISTING STATUS

We support ASX's initial view that a dual listed company admitted to ASX as a standard ASX Listing should need the approval of its shareholders to change its admission category to an ASX Foreign Exempt Listing. Changing from a standard to a foreign exempt listing on the ASX is not trivial. As the Consultation notes, such a change can have a significant impact on voting and other rights (including voting on remuneration report, equity grants to directors or director election at each AGM). Accordingly, it is reasonable for a listed company seeking to change to a Foreign Exempt Listing to be required to put this to an ordinary resolution at a general meeting of shareholders.

On the specific questions raised in the Consultation on this issue, our answers are:

1. [Should security holder approval be required for a change in admission category from ASX Listing to ASX Foreign Exempt Listing?](#)
Yes

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?](#)
We are not aware of any significant unintended consequences or other risks that this change raises that have not been considered in this consultation paper.

ISSUE 2: SHAREHOLDER APPROVAL FOR A DUAL LISTED COMPANY TO DELIST FROM ASX

We also support ASX's initial view that a dual listed company seeking to delist from the ASX should need shareholder approval. We note that this would represent a formalisation of ASX's existing guidance that delisting is a significant decision that it is appropriate and a matter of good governance that shareholders should be consulted on such a significant decision.

We also appreciate that the introduction of a shareholder approval requirement for the delisting of a dual listed company may make it more challenging to attract foreign companies to seek an additional listing on ASX. Accordingly, we believe it is reasonable to not require shareholder approval if a foreign company that was first listed on a foreign exchange and subsequently listed on ASX did wish to delist from ASX.

On the specific questions raised in the Consultation on this issue, our answers are:

3. [Should security holder approval be required for a voluntary delisting by a dual listed entity on ASX?](#)
Yes

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?
The requirement for security holder approval should apply only to a dual listed entity that was first listed on ASX and not to an entity that was listed on a foreign exchange before listing on ASX.
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?
Security holder approval by ordinary resolution is generally sufficient but a special resolution should continue to be required if the delisting results in the entity's ordinary securities not being readily able to be traded on another exchange.
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?
We are not aware of any significant unintended consequences or other risks that this change raises that have not been considered in this consultation paper.

ISSUE 3: SHAREHOLDER APPROVAL FOR ISSUES OF SHARES UNDER A REGULATED TAKEOVER OR MERGER

We also support ASX's initial view that bidder shareholder approval should be required for takeovers or mergers that result in the issue of 25% or more shares on issue at the date of announcement. We believe it is appropriate for the 25% threshold to apply to entities in the S&P/ASX300 or with a market capitalisation above A\$300m, while leaving the current 100% threshold in place for entities outside the S&P/ASX300 or with a market capitalisation of A\$300m or below.

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)?
Yes
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?
Reducing the limit on issues of securities without shareholder approval would make it more difficult for listed bidders to compete in and execute takeovers and mergers as discussed on page 18 of the consultation paper. These include increased transaction complexity, execution risk, financial impact and loss of flexibility to enter transactions resulting in bidders potentially seeking to delist.

However, the benefit of requiring shareholder approval is that listed bidders will be engaging with and receiving direct feedback from its shareholders. This two-way dialogue provides an opportunity for the bidder (management and board) and its shareholders to better understand their respective positions. This can help avoid outcomes which are against the interests of both bidder and shareholders as occurred with the recent James Hardie-Azek transaction and James Hardie AGM.
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?
The costs to a listed bidder of introducing a lower limit on issues under exceptions 6 and 7 are discussed in the answer to Question 10 above. From our perspective as a shareholder in a listed bidder, we strongly believe that the benefit of requiring a shareholder vote on a 25% or more dilutive acquisition outweigh these costs based on the opportunity provided by engagement between the bidder and shareholders.

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?

We support the principle that a dilutive issue of shares of 25% or more by an ASX listed bidder should require shareholder approval, irrespective of the jurisdiction in which the transaction takes place.

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?

We are not aware of any significant unintended consequences or other risks that this change raises that have not been considered in this consultation paper.

ISSUE 4: SHAREHOLDER APPROVAL FOR SIGNIFICANT CHANGES TO THE NATURE OR SCALE OF A LISTED COMPANY'S ACTIVITIES

We express concern about the lack of a requirement for shareholder approval for equity dilutive acquisitions. We do not suggest a requirement for shareholder approval of any significant acquisition whether or not it involves an issue of shares or for any significant transaction whether it is an acquisition or disposal.

As ASX is not currently proposing specific changes to introduce a requirement for shareholder approval of any significant transaction, we have nothing to add on this issue.