WaveStone CAPITAL

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Andrew Campion
ASX Limited
39 Martin Place
Sydney NSW 2000
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Dear Mr Campion,

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

Thank you for the opportunity to comment on the consultation paper on Security holder approval of dilutive acquisitions and changes in admission status.

WaveStone Capital is an Australian Equities Fund Manager with A$9.0bn in funds under management, investing on behalf of retail as well as institutional clients.

As an overall, we believe that having the ability to vote as security holders on material corporate actions is fundamental to fair, transparent and trusted markets. The governance standards set by the ASX Listing Rules must by design be able to protect the interests of minority security holders to preserve the premium associated with entities listed on the ASX. The recent James Hardie's transaction has highlighted a critical gap in how the operation of the Listing Rules can unfortunately lead to transactions that materially erode security holder value.

As such, WaveStone welcomes this consultation by ASX and generally supports the ASX's policy positions to introduce security holder approval requirements for a change of admission category to ASX Foreign Exempt Listing (section 3) and for the voluntary delisting of a dual listed entity (section 4). We also strongly support amending the Listing Rules to provide bidder security holders with enhanced rights to approve share issues supporting takeovers and mergers (section 5).

Following consultation, we encourage ASX to progress timely implementation of these targeted proposals. We also encourage ASX to consider introducing a process for the periodic review of the Listing Rules.

On a separate note, but relating to learnings from James Hardie governance fallout, we suggest there is also a need to revisit ASX rules on director elections. In our view long-term investors would benefit from annual elections for all directors, rather than the current three-year rotation model. Annual elections—a requirement in the UK—would strengthen director accountability and engagement without creating short-termism or board instability (as can be seen in the case of BHP Group who voluntarily adopt this as well as dual listed entity Rio Tinto). We look forward to contributing to any future review of these governance settings to support the long-term sustainability of ASX-listed entities

We address the issues raised in the consultation paper in order as below:

Security holder approval for change of admission category to ASX Foreign Exempt Listing

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

WaveStone supports an amendment of the Listing Rules to require security holder approval for a change from ASX Listing to ASX Foreign Exempt Listing.

The ASX Foreign Exempt Listing offers significantly reduced compliance obligations, with entities primarily governed by their overseas home exchange requirements. Given the more demanding admission requirements to be listed as an ASX Foreign Exempt Listing —including $200 million in profits for each of the last three financial years and $2 billion in net tangible assets or market capitalisation—such transitions remain unusual, with only three occurring in the past three years.

Although security holders retain trading access on both exchanges, the oversight framework and associated protections can be substantially different. Requiring security holder approval via proposed Listing Rule change, would therefore provide meaningful protection to investors without imposing unreasonable barriers to legitimate corporate restructuring.

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?

WaveStone has not identified any significant risks associated with this change that have not been considered in the consultation paper.

Security holder approval for voluntary delisting by a dual listed entity

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

WaveStone supports an amendment of the Listing Rules to require security holder approval for the voluntary delisting of a dual listed entity.

If a dual listed entity delists from the ASX, security holders would be able to sell their securities on the other exchange. However, depending on the requirements of the other market, this change could materially diminish security holders' rights and weaken corporate governance expectations, which can go directly to value. Therefore, it is appropriate that security holders provide consent for the delisting.

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?

WaveStone acknowledges that requiring security holder approval for voluntary delisting could make ASX less attractive to foreign entities considering a dual listing, as it may introduce additional uncertainty and procedural steps if the entity seeks to exit the ASX.

For this reason, we are comfortable that security holder approval should not apply to an entity that was listed on a foreign exchange before listing on ASX. It is reasonable to assume that the governance expectations of companies initially listed overseas primarily reflect the standards and regulatory environment of their home market.

If investors have granted Foreign Exempt Listing status via special resolution – then no security holder approval is required to voluntary delist so far securities available to be traded on primary exchange.

5. If securityholder approval is required, should this be by ordinary resolution? Should a special resolution rather than an ordinary resolution continues to be required if the entity's ordinary securities are not readily able to be traded on another exchange?

WaveStone supports the introduction of a security holder vote on this issue. Our view is that a special resolution requirement would be more appropriate, given the potential effect on security holder value where shares are only available for trade in a jurisdiction with incomparable corporate governance and security holder rights provisions. Nonetheless, WaveStone sees benefit in requiring security holder approval by ordinary resolution as improvement from the current position.

WaveStone supports no changes to the current requirement for approval by special resolution for the delisting of an entity with securities that are not, and will not be, 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?

WaveStone has not identified any significant risks associated with this change that have not been considered in the consultation paper.

Bidder security holder approval of share issues for takeovers and mergers – Exceptions from Listing Rule 7.1

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

The James Hardie–Azek transaction, along with others (such as Perpetual's acquisition of Pendal) demonstrated that the current Listing Rules can allow an ASX-listed company to significantly dilute existing security holders without their vote, notwithstanding the position in the Rules that issues exceeding 15% should be subject to approval. The negative financial implications of this transaction highlighted the need for greater direct accountability to security holders when companies undertake takeovers or mergers involving substantial equity issuances.

WaveStone's preferred approach to addressing this problem is to remove exceptions 6 and 7 entirely. Reverting to the standard 15% limit for such transactions would both strengthen security holder rights and simplify the Listing Rules.

If the exceptions are to be retained, significantly reducing the current 100% limit, for example to 25%, would be a positive step that WaveStone supports, and could substantively address the key security holder rights issues which emerged in the James Hardie transaction.

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

WaveStone supports ASX's initial position to reduce the limit from 100% to 25% of ordinary securities on issue. This would provide for direct accountability to security holders in many circumstances where proposed transactions have significant financial and control implications. In our view, a higher threshold (such as 50% or 75%) would not sufficiently address relevant risks to security holder value and rights, in particular as a 25% limit is already an exception to the 15% rule set out in Listing Rule 7.1. Under a 25% threshold, companies would retain the flexibility to progress many smaller acquisitions or mergers without security holder approval. In addition, the market has demonstrated broad support for a 25% limit, as highlighted by recent votes to amend the constitutions of Orora Limited and Sims Limited, where there was overwhelming support from both investors and the companies involved for broadly similar rules.

As highlighted in the consultation paper, the practical impact of reducing the threshold to 25% is expected to be limited. For companies in the ASX300 or with a market capitalisation above $300 million, only 19 transactions over the last five years involved share issuances between 25% and 100%.

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)?**

We are okay for entities outside the S&P/ASX 300 to maintain status quo as proposed by the ASX in the consultation.

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?**

Our liaison indicates that good governance practice of requiring approvals via a sound LP-GP relationship hasn't hindered private market transactions that are structured to create value. As such, we do not believe that this would be a significant barrier to the execution of takeovers and mergers which are in the best interests of the bidder's security holders.

Evidence in comparable markets indicates that active M&A markets coexist alongside robust security holder approval requirements. For example, there remains an active M&A environment in the United States where the NYSE and NASDAQ require bidders to seek security holder approval of share issuances beyond 20% per transaction. Similarly, security holder approval requirements on the TSX, HKEx and SGX do not appear to be a significant barrier to dealmaking.

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?**

WaveStone acknowledges that there are some costs associated with seeking security holder approval of a transaction, including administrative and advisory expenses. However, relative to the potential for security holder value destruction (as experienced for example in the James Hardie-Azek transaction) administrative and advisory expenses are minimal. Further, as outlined above, we expect that votes would only be required in a limited number of transactions. This would constrain any market-wide additional costs associated with reforms to exemptions 6 and 7.

In our view, potential benefits of the reform outweigh costs. Requiring security holder approval for significant equity issuances strengthens market discipline, improves transparency, and provides an opportunity for scrutiny where there may be significant security holder dilution. This could help prevent dilutive and value-destructive deals, such as the James Hardie-Azek acquisition. The decline in James Hardie's share price following the announcement of the deal was indicative of how poorly considered transactions can materially erode security holder value.

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?**

WaveStone holds some concerns around ASX's existing practice of granting waivers that allow exemptions from security holder approvals where transactions occur in foreign markets. These jurisdictions do not necessarily provide security holder protections comparable to those available under Australian law.

However, a reduced limit under exemptions 6 and 7 would significantly mitigate these risks by capping the level of dilution that can occur without direct security holder oversight. Therefore, provided that limits on issue of securities without approval under exceptions 6 and 7 is reduced to 25% as proposed, WaveStone does not object to the continuation of ASX's current approach of offering waivers to extend these exceptions to transactions conducted under foreign laws.

WaveStone sees value in ASX reconsidering its approach to international transaction waivers in due course. This could include the development of a more detailed and transparent set of criteria to determine which regulatory regimes should be considered an "acceptable regulatory regime equivalent to the Corporations Act". However, this work should not delay the proposed reform of the Listing Rules contemplated in the Consultation Paper.

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?**

WaveStone has not identified any significant risks associated with this change that have not been considered in this consultation paper.

Thank you for the opportunity to share our views on this important issue. We look forward to the outcome of this consultation.

Kind Regards,

Raaz Bhuyan
Director & Portfolio Manager, WaveStone Capital