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12 December 2025

ASX Limited
39 Martin Place
Sydney NSW 2000
Sent via email: ListingsPolicy@asx.com.au

Dear Sir/Madam,

Shareholder approval of dilutive acquisitions and changes in admission status

About ACSI

Established in 2001, ACSI exists to provide a strong voice on financially material environmental, social and governance (ESG) issues. Our members include Australian and international asset owners and institutional investors with more than $1.9 trillion in funds under management.

Through our research, engagement, advocacy and voting recommendations, ACSI supports members in exercising active ownership, which enhances the long-term value of the retirement savings entrusted to them to manage. ACSI members can achieve value for their beneficiaries through genuine and permanent improvements to the ESG practices of the companies in which they invest.

ACSI's engagement program focuses on ASX300 companies and our submission is informed by our experience monitoring and engaging with this cohort.

Summary of ACSI's position

Ensuring shareholders have a vote in material corporate actions is fundamental to fair, transparent and trusted markets. That trust has been undermined by companies that have used the ASX Listing Rules to allow dilutive acquisitions or mergers to occur without a shareholder vote. James Hardie's acquisition of Azek highlighted how operation of the Listing Rules can lead to transactions that materially erode shareholder value.

ACSI welcomes the release of ASX's consultation on potential changes to listing rules governing shareholder approval requirements and admission status. The consultation paper appropriately recognises investor concerns and implementation of the three key proposed amendments would meaningfully address the shareholder rights issues identified.

More specifically, ACSI supports the introduction of shareholder 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 shareholders with enhanced rights to approve of share issues supporting takeovers and mergers (section 5).

Following consultation, we encourage ASX to progress timely implementation of these targeted proposals. As a general principle, ACSI supports the certainty provided by amending the Listing Rules rather than changing guidance or enforcement practices.

We also agree with ASX's proposal not to amend Listing Rule 11.1 at this time. However, the operation of Listing Rule 11, as well as several other Listing Rules, warrants further consideration in the future. We encourage ASX to consider introducing a process for the periodic review of the Listing Rules.

Please see attached detailed responses to the consultation questions.

I trust our comments are of assistance. Please contact me or Kate Griffiths, Executive Manager – Policy and Research (kgriffiths@acsi.org.au), should you require any further information.

Louise Davidson AM
Chief Executive Officer
Australian Council of Superannuation Investors

APPENDIX: RESPONSES TO CONSULTATION QUESTIONS

Shareholder 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?

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

If an ASX listed entity changes to a Foreign Exempt Listing, that change can lead to a material deterioration in shareholders' rights and corporate governance expectations, depending on the standards of the company's primary listing market. Therefore, it is appropriate to require shareholder approval for a change to ASX Foreign Exempt Listing.

While there are some administrative costs associated with progressing a security holder vote, this is appropriate, given the need to maintain the confidence of investors. Additionally, the resolution could be progressed at an annual general meeting with minimal additional cost. The administrative burden of the change across the market is not expected to be significant as decisions to change from standard to Foreign Exempt listings are relatively infrequent.

Our view is that a requirement for special resolution for a change to a Foreign Exempt Listing would be appropriate, given there can be significant impacts on corporate governance expectations and shareholder rights. Nonetheless, ACSI sees benefit in requiring security holder approval by ordinary resolution as improvement from the current position.

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?

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

Shareholder 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?

ACSI 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, shareholders 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 shareholders' rights and weaken corporate governance expectations, which can go directly to value. Therefore, it is appropriate that shareholders 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?

ACSI acknowledges that requiring shareholder 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, ACSI is comfortable that shareholder 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.

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?

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

ACSI 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?

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

Bidder shareholder 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 shareholders 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 shareholders when companies undertake takeovers or mergers involving substantial equity issuances.

ACSI'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 shareholder 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 ACSI supports, and could substantively address the key shareholder 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?

As above, our preferred approach to strengthening shareholder approval rights is to remove

exemptions 6 and 7 entirely. However, if the exemptions remain in-place, ACSI supports ASX's initial position to reduce in the limit from 100% to 25% of ordinary securities on issue. This would provide for direct accountability to shareholders 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 shareholder 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 shareholder 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)?

ACSI's focus is primarily on the ASX300, however we see no clear reason why the provisions should not be the same across the market, noting that those smaller entities have existing additional flexibility to issue shares without specific shareholder approval under the effective 25% 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?

ACSI acknowledges that shareholder approval requirements could marginally contribute to transaction execution risk for listed bidders. However, 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 shareholders.

Evidence in comparable markets indicates that active M&A markets coexist alongside robust shareholder approval requirements. For example, there remains an active M&A environment in the United States where the NYSE and NASDAQ require bidders to seek shareholder approval of share issuances beyond 20% per transaction. Similarly, shareholder 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?

ACSI acknowledges that there are some costs associated with seeking shareholder approval of a transaction, including administrative and advisory expenses. However, relative to the potential for shareholder value destruction (as experience, 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 shareholder approval for

significant equity issuances strengthens market discipline, improves transparency, and provides an opportunity for scrutiny where there may be significant shareholder dilution. This could help prevent to prevent dilutive and value-destructive deals, such as the James Hardie-Azek acquisition. The decline in James Hardie's share price following the announcement deal was indicative of how poorly considered transactions can materially erode shareholder 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?

ACSI holds some concerns around ASX's existing practice of granting waivers that allow exemptions from shareholder approvals where transactions occur in foreign markets. These jurisdictions do not necessarily provide shareholder 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 shareholder oversight. Therefore, provided that limits on issue of securities without approval under exceptions 6 and 7 is reduced to 25% as proposed, ACSI does not object to the continuation of ASX's current approach of offering waivers to extend these exceptions to transactions conducted under foreign laws.

ACSI 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?

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