T +61 2 23 5744 **F** +61 2 9232 7174
E info@governanceinstitute.com.au
Level 7, 60 Carrington Street,
Sydney NSW 2000
GPO Box 1594, Sydney NSW 2001
W governanceinstitute.com.au

17 December 2025

ASX Limited
39 Martin Place
Sydney NSW 2000
PO Box H224
Australia Square NSW 1215

By email: ListingsPolicy@asx.com.au

Dear Sirs,

RE: Shareholder approval of dilutive acquisitions and changes in admission status Consultation Paper (Consultation Paper)

Who we are

Governance Institute of Australia is the only fully independent professional association dedicated to the advancement of governance and risk practice in Australia. Our internationally recognised qualifications equip a diverse professional network of business leaders to make good decisions for the benefit of Australia's economy and society. With a history dating over 100 years, Governance Institute is Australia's leading and trusted voice of governance. Our fully accredited education and training is tailored to the meet the needs of governance professionals across public listed, unlisted, and private companies, as well as the public sector and not-for-profit organisations.

Governance Institute is committed to independent, evidence-based advocacy that is focused on strengthening the governance capability of Australian organisations. We believe that good governance is the foundation of organisational resilience, productivity, and public trust.

1. Preliminary comments

We note that ASX considered some of the issues canvassed in the Consultation Paper in 2015 and 2017 and that the rules in question have now been in place for some years. As the Consultation Paper notes changes in rule settings can lead to unintended consequences and regulatory change often comes at a cost to regulated entities. For this reason, we are reluctant to advocate interference with the operation of Listing Rule provisions that largely work effectively. While we acknowledge that this may be an area where stakeholder expectations have moved over time and there have been calls for change, we also question whether concerns raised about a few transactions indicate sufficient basis to change the rules applicable to all listed entities.

When considering whether there is a need for change, we have taken into account:

- Whether the proposed changes are likely to create a deep liquid market at a time when there has been an overall decline of Australia's public markets as a percentage of global market capitalisation

and a contraction in Australian IPO activity.[1] Will the proposals disadvantage Australian listed companies compared to their international peers in the globally competitive M&A market?

- As noted in the Consultation Paper, the Corporations Act, ASIC and the Takeovers Panel are the primary source of regulation for takeovers in Australia. We urge caution about adopting shareholder approval requirements that may reduce the flexibility provided by the Corporations Act, create further regulatory complexity and impose additional costs on listed entities.
- The Corporations Act provides that directors are responsible for management of an entity. 'Generally an entity's decisions about corporate transactions, including related issues of securities, are matters for the directors, who are subject to duties to act in good faith in the entity's best interests. The directors are likely to have access to better information about the entity and the proposed transaction and will have access to professional advice.'[2] Directors also need to consider the long-term best interests of an entity. Security holders are not subject to the same duties.
- Security holders are not homogenous. The interests of retail and institutional security holders can differ and even among institutional shareholders differences in investment style will mean different investors may take different courses of action in relation to the same transaction. Security holders are not bound to act in the best interests of the company, and some may have vested interests not aligned to the interests of security holders as a whole, for example, a substantial security holder who may wish to protect its own controlling stake.
- Security holders also have a range of remedies available to them where they are dissatisfied with a board's management of an entity, including voting against re-election of the directors or voting against the remuneration report at an annual general meeting. They are also able to sell their securities.

2. Shareholder approval for a dual listed company to change to ASX Foreign Exempt Listing Status

We consider that a dual listed company whose home exchange is not ASX should not require shareholder approval to change its admission status to be an ASX Foreign Exempt Listing. Our rationale is that the entity came to ASX from its home exchange and was accepted by ASX for listing which should be sufficient. ASX's processes for accepting an overseas listed entity for ASX listing do not amount to a 'rubber stamp'. If an entity is prepared to have ASX assess it against the tests for an ASX Foreign Exempt Entity, which also involves a higher financial test, no further approvals should be required. We support the statements in the Consultation Paper that security holders who are unhappy with the change in admission status would still be able to sell their shares either on ASX or their home exchange and there should be reluctance to interfere with the role of the board as the primary decision maker.

The Consultation Paper refers to three comparator markets TSX, NZX and SGX and to the fact that TSX and NZX require exchange approval for this type of change. It also notes that SGX has previously required shareholder approval as a condition for an entity wanting to make this type of change but that it is not required by the SGX listing rules. We do not consider ASX would be out of step with other exchanges by not making this change to the Listing Rules given like TSX and NZX exchange approval is still required. We also consider it is important for ASX to retain the ability to approve these types of changes.

We note the reference in the Consultation Paper to the fact that the increase in regulatory burden on listed entities created by obtaining shareholder approval would be low. However, there are direct costs associated with holding shareholder meetings including printing, postage and the costs associated with a physical, hybrid or virtual meeting as well as the increased time and uncertainty involved in obtaining

[1] These issues were explored in ASIC's Paper Australia's evolving capital markets: A discussion paper on the dynamics between public and private markets, June 2025. See also Governance Institute's Submission to the ASIC Consultation, 2 May 2025.

[2] Consultation Paper at page 15.

shareholder approval. In addition, if change is connected to other transactions not requiring shareholder approval this may put those transactions at risk.

The Consultation Paper notes that changing a dual listed entity's status to an ASX Foreign Exempt Listing is unusual so that in practice the proposed Listing Rule change would be used rarely. We question the wisdom of introducing a requirement into the Listing Rules which is not likely to be used often at a time when there is such a focus on regulatory simplification.

If this consultation supports a change our preference would be a change to Guidance rather than a change to the Listing Rules.

3. Shareholder approval for voluntary delisting by a dual listed entity

We do not support the introduction of a requirement for security holder approval for the voluntary delisting of a dual listed entity. We also support maintenance of the existing guidance that ASX will require security holder approval as a condition of its consent only where the entity's securities are not, and will not be, readily tradeable. We consider that the Consultation Paper accurately summarises the arguments in favour of not making a change.

If the case for change is supported by this consultation, we consider that security holder approval should not be required for a voluntary delisting from ASX where the entity was first listed on a foreign exchange. We find the argument in the Consultation Paper that imposing such a requirement has the potential to discourage foreign listed entities from seeking a dual listing on ASX highly persuasive.

We support the requirement for approval by special resolution for the delisting of an entity whose securities are not, and will not be, readily able to be traded on another exchange remaining in place.

4. Bidder shareholder approval of share issues for takeovers and mergers – Exceptions from Listing Rule 7.1

We do not consider that the current limit on issues of securities without approval under exceptions 6 and 7 in Listing Rule 7.2 should be reduced, subject to the reverse takeover limit. We consider that the current policy settings are appropriate and support the concept that the board has primary responsibility for decisions about transactions, directors are responsible for management of an entity and for determining the strategic direction of a company. This includes making decisions about strategic acquisitions or divestments:

> *… Disempowering boards from making independent decisions on transformative M&A could have implications for the authority and accountability of directors and, at a practical level, would impact competitiveness by introducing additional conditions to closing and, therefore, inherent deal uncertainty. In some cases it may also be appropriate for the board to consider a voluntary shareholder vote, but in the vast majority of cases this is unlikely to be palatable to bidder or target. Mandating that shareholders have a say could result in boards needing to give undue weight to strategic vetoes by shareholders for reasons that do not necessarily align with the interests of the company (or its shareholders) as a whole. The proposed reforms may operate against the interests of the majority of shareholders by substituting power and accountability from the board to a handful of influential (and outspoken) shareholders.*[3]

We also consider that there are likely to be other consequences of reducing the limit including:

[3] Article *The ASX Listing Rules up for review but still fit for purpose: the case for retaining the existing policy settings on reverse takeovers*, Tom Hall, Elise Blume, Jack Shanahan, 13 October 2025.

- Bidders being required to offer more attractive terms such as increasing consideration, offering break fees or other transaction protection mechanisms, to counteract the uncertainty about the transaction proceeding.
- Bidders having less flexibility to vary offer terms if the variation results in a requirement to seek further shareholder approval.
- Requiring up front security holder approval for the maximum number of shares that may be offered also puts the bidder at a disadvantage because it has 'showed its hand'.
- The bidder's negotiating position may be weakened by the requirement to explain to its shareholders why the transaction is in their best interests.
- Listed bidders being at a disadvantage compared to other bidders such as private equity firms which would not be subject to the same approvals.
- Transactions may not proceed or may be vetoed by strategic security holders for reasons that do not reflect the interests of **all** security holders, resulting in all security holders missing out on the potential benefits of the transaction.

5. Shareholder approval of significant changes to the nature or scale of a listed company's activities

We note the issues raised in the final section of the Consultation Paper about introduction of a requirement to seek security holder approval of 'any significant transaction'. Our preliminary position is that we would not support such a change. As the Consultation Paper notes this would put ASX out of step with peer exchanges at a time when there has been an overall decline of Australia's public markets as a percentage of global market capitalisation and a contraction in Australian IPO activity.

If you have any questions, please contact me or Catherine Maxwell, GM, Policy and Advocacy.

Yours faithfully,

(Sgd) Katrina Horrobin

CEO