Stockbrokers and Investment Advisers Association
Serving the interests of investors

17 December 2025

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Dear Jon

Shareholder approval of dilutive acquisitions and changes in admission status

The Stockbrokers and Investment Advisers Association (SIAA) is the professional body for the stockbroking and investment advice industry. Our members are Market Participants and wealth management firms that provide securities and investment advice, execution services and equity capital-raising for Australian investors, both retail and wholesale, and for businesses. Practitioner Members are suitably qualified professionals who are employed in the securities and derivatives industry.

SIAA members represent the full range of advice providers from full-service and online brokers to execution-only participants and they provide wealth advice and portfolio management services.

The history of the stockbroking profession in Australia can be found here.

Thank you for the opportunity to provide feedback to ASX's consultation paper on shareholder approval of dilutive acquisitions and changes in admission status.

Our response to the various questions is below.

Shareholder approval for change of admission category to ASX Foreign Exempt Listing

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

SIAA supports ASX's proposal to change the listing rules to require a dual listed entity to seek shareholder approval to change its admission status from ASX Listing to ASX Foreign Exempt Listing.

We agree with ASX that this new requirement would be sensible given that a change in a dual listed entity's admission category to ASX Foreign Exempt can impact the voting and other rights of the entity's security holders. We don't consider that the change would place an unreasonable regulatory burden on dual listed entities. We also agree that as the introduction of a new security holder approval requirement would be a substantive change to the regulatory settings for listed entities, it

should be contained in the listing rules rather than guidance. A rule requirement provides greater transparency and consistency of approach for the benefit of both listed entities and their security holders.

Question 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 don't consider that there will be unintended consequences to this change. As the change in a dual listed entity's admission category to ASX Foreign Exempt Listing can impact the voting and other rights of the entity's security holders, it is appropriate that it should require their approval.

Shareholder approval for voluntary delisting by a dual listed entity

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

SIAA agrees with the proposal that security holder approval should be required for a voluntary delisting by a dual listed entity on ASX, where that dual listed entity was first listed on ASX.

We agree that a delisting from ASX, even where the entity will continue to be listed on another exchange, can have a significant impact on the voting and other rights of the entity's security holders and should require their approval.

In particular, complications can arise for retail investors when entities delist from the ASX that can make it difficult for them to sell their shares in that entity or exercise their shareholder rights. There are also tax implications for shareholders who sell shares that have been delisted from the ASX at another listing venue. We consider that given the size and importance of the retail market in Australia, these issues should be taken into consideration.

We consider that requiring security holder approval for a voluntary delisting puts entities on notice about the importance of listing on the ASX and hopefully, encourages them to retain their ASX listing.

Question 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?**

SIAA agrees with ASX's proposal that limits the requirement for approval to apply only to dual listed entities that are first listed on ASX. Again, as with the other proposals we recommend that the proposals be implemented by a change to the rules rather than guidance as that would provide greater transparency and consistency of approach for the benefit of both listed entities and their security holders.

Question 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 available to be traded on another exchange?**

SIAA agrees with ASX's proposal that an ordinary resolution of security holders is sufficient for the delisting of a dual listed entity. We also agree with ASX's view that there should be no change 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.

Question 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 don't consider that there will be any significant unintended consequences arising from this proposed 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

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

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

Question 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)?**

Question 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?**

Question 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?**

Question 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?**

Question 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 understand the issues that have been raised in the context of the James Hardie matter where existing security holders were not provided with a shareholder vote and had their interests diluted.

However, we do not support reducing the current limit on issues of securities without approval under exceptions 6 and 7 as we consider that it will restrict the ability of entities to undertake merger activities and make mergers less attractive.

It is important to consider the wider context in which this discussion is taking place which includes concerns over a decline in public market listings, with a cause being the burden of regulation imposed on listed entities. We agree with ASX that any changes to the listing rules that increase the regulatory burden on listed entities may discourage entities from listing or encourage listed entities to delist so that they have, or perceive that they have, greater flexibility to transact.

SIAA supports regulation that is effective, not prescriptive and burdensome. It is important that our capital markets attract listings and grow and that ASX takes a sensible, not a reactive, approach to this issue. Essentially, we would encourage ASX not to make it harder for entities to do business.

An unintended consequence of amending the listing rules to require shareholder approval will be the introduction of uncertainty in transactions that in turn may diminish value. While a transaction may be logical, accretive and transformative, uncertainty may result in increased transaction costs. It enables other parties to take advantage of that uncertainty and puts the listed bidder at a tactical disadvantage. Australian listed entities could be disadvantaged on a global scale by this proposal. Introducing a shareholder vote also introduces delay and complexity in a transaction.

We agree with ASX that 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.

Accordingly, SIAA does not support the proposals for change. We consider that the introduction of a 'hard and fast' rule will be to the detriment of Australian capital markets.

If ASX receives support from the majority of the market to make some or all of the proposed changes, we strongly recommend that entities be provided with a carve out similar to that made available to smaller companies under Listing Rule 7.1A, allowing them to seek shareholder approval to issue a further 10% of capital on an annual basis. That will provide security holders with a vote but provide entities with flexibility to pursue merger opportunities.

Security holder approval for change to nature or scale of activities under listing rule 11.1.2

We don't support a change to the Listing Rules to require security holder approval of transactions changing the nature or scale of an entity's activities.

Conclusion

If you require additional information or wish to discuss this submission in greater detail please do not hesitate to contact SIAA's policy manager, Michelle Huckel, using the contact details in the covering email.

Kind regards

Judith Fox
Chief Executive Officer