Norges Bank Investment Management

ASX Limited
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Date: 04.12.25

Re: Public Consultation on Shareholder Approval Requirements under the ASX Listing Rules – Shareholder Approval of Dilutive Acquisitions and Changes in Admission Status

We refer to the invitation from the ASX to comment on the consultation paper on proposed changes to the Listing Rules pertaining to shareholder approval requirements. We appreciate the opportunity to provide feedback as ASX considers how to enhance shareholder protection.

Norges Bank Investment Management (NBIM) is the investment management division of the Norwegian Central Bank and is responsible for investing the Norwegian Government Pension Fund Global. NBIM is a globally diversified investment manager with AUD 2.94 trillion invested in 62 countries as of 30 June 2025, of which AUD 33.72 billion was invested in the shares of 317 ASX-listed companies.

As an investor with around 70 percent of our holdings in listed equity, we depend on thriving public markets that foster long-term economic value creation by companies. Robust minority shareholder protection is fundamental to resilient public markets; it ensures fair treatment of all shareholders, facilitates prompt information flows, prevents market disruption, and restricts harmful defensive actions by target companies. These elements support a vibrant market for corporate control that serves as an effective external governance mechanism. We believe that strong minority shareholder protections impact our long-term returns. Therefore, we welcome the potential amendments to the Listing Rules to strengthen these safeguards and contribute to well-functioning markets that benefit all participants.

Our responses are grounded in our Global Voting Guidelines, which guide our voting decisions to enhance long-term investment performance and reduce governance-related financial risks. We believe that shareholders should have the right to approve fundamental changes to the company, and that existing shareholders should have the right to approve share issuances to prevent dilution without consent. We will not support corporate transactions where there is insufficient transparency or that do not treat all shareholders equitably.

Please find in the annex our responses to the relevant questions. We thank you for considering our perspective and remain at your disposal should you wish to discuss these matters further.

Yours sincerely

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Annex – NBIM responses to relevant questions and proposals

Q1: Should security holder approval be required for a change in admission category from ASX Listing to ASX Foreign Exempt Listing?

NBIM supports Option 3 – a rule amendment requiring security holder approval by ordinary resolution for changes to ASX Foreign Exempt Listing status. A change from standard ASX Listing to ASX Foreign Exempt Listing can have profound consequences for shareholders that warrant their direct consent:

Permanent alteration of shareholder rights. Foreign exchanges may have materially different governance standards. For example, under other exchanges' rules, companies may be able to issue equity to insiders without shareholder approval, issue stock during takeovers without approval, and potentially introduce dual-class shareholdings that would not be permitted under ASX rules.

Reduced accountability mechanisms. The ability of shareholders to hold management and the board accountable for poor performance may be diminished under less stringent foreign governance regimes.

Pathway to delisting. Under ASX Guidance Note 33, Foreign Exempt Listing status may facilitate eventual delisting from ASX without shareholder approval, as security holders retain the ability to sell on the overseas home exchange.

This position aligns with NBIM's published voting policy that shareholders should have the right to approve fundamental changes to the company. A change in admission category that permanently alters shareholder rights clearly meets this threshold. We do not consider that the board's role as primary decision-maker for commercial affairs is unduly constrained by this requirement. Board discretion to propose and recommend changes should be preserved; however, shareholder approval should be required for any decision that fundamentally affects shareholder rights.

Q2: Are there 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 do not consider that requiring shareholder approval raises material unintended consequences or risks. On the contrary, proceeding without such a requirement carries greater risk of investor harm.

The regulatory burden is proportionate. Given the rarity of such changes (only 3 in the past 3 years) and the high financial thresholds required to quality for a Foreign Exempt Listing status, the additional cost of an ordinary resolution at an AGM or EGM is proportionate to the significance of the decision. Entities can sequence timing to ensure support before proceeding with connected transactions.

A rule amendment is preferable to guidance. A rule change provides certainty, transparency, and equal treatment. Guidance-based discretion creates uncertainty and may result in inconsistent application across cases.

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Q3: Should security holder approval be required for a voluntary delisting by a dual listed entity on ASX?

NBIM supports Option 3 – a rule amendment requiring security holder approval by ordinary resolution for voluntary delisting, limited to entities that were first listed on ASX. The current framework, which does not require shareholder approval where securities remain tradable on another exchange, creates several concerns:

The 'ability to sell' rationale is insufficient. While shareholders may technically retain liquidity on a foreign exchange, delisting from ASX may impose significant practical barriers including different trading hours, foreign currency exposure, different settlement systems, and potentially reduced analyst coverage and institutional attention. This is particularly relevant for retail investors. ASX may wish to consider the feasibility of a minimum delisting price offer inspired by the German Stock Exchange Act Section 39 (2) as an alternative or in addition to shareholder approval.

Circumvention of governance standards. Delisting allows companies to bypass ASX's governance framework—which shareholders may have relied upon when investing—without the need to obtain consent from those shareholders.

Minority trading threshold loophole. A minority of securities trading on a foreign exchange can become the catalyst for delisting without any reference to shareholders trading on ASX.

Erosion of investor trust. The ability to delist without consent threatens Australia's reputation as a hub for well-governed and transparent financial markets.

Q4: 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?

Yes. NBIM supports the differentiated approach in Option 3, whereby the approval requirement applies only to entities that were first listed on ASX.

Proportionate to shareholder expectations. Shareholders who invested in a company first listed on ASX have a reasonable expectation that ASX governance standards will continue to apply. This expectation is weaker for shareholders in a company that was first listed elsewhere and subsequently listed on ASX as a secondary market.

Q5: 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?

Yes to both questions.

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Ordinary resolution is appropriate for dual listed entities. Where securities remain tradable on another exchange, shareholders retain liquidity options even if the ASX listing is discontinued. An ordinary resolution threshold appropriately reflects the significance of the decision while remaining proportionate to the circumstances. This is consistent with international practice—where shareholder approval is required for dual listed entity delisting, it is consistently by ordinary resolution.

Special resolution should continue to be required where securities will not be readily tradeable. ASX already recognises in Guidance Note 33 that delisting can have an impact on minority security holders that is sufficiently serious to warrant a special resolution where securities cannot be traded elsewhere. We agree with this position. The higher threshold reflects the more severe consequences for shareholders who would have no alternative market access.

Q6: 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 do not consider that the proposed change raises significant unintended consequences beyond those already considered in the consultation paper.

The primary risk identified—that requiring approval may deter foreign entities from venturing an additional listing on ASX—is substantially mitigated by the differentiated approach in Option 3. By limiting the approval requirement to entities first listed on ASX, the proposal preserves ASX's attractiveness to foreign issuers seeking a secondary listing while protecting the interests of shareholders who invested under ASX governance standards.

Q7: Should the current limit on issues of securities without approval under exceptions 6 and 7 in Listing Rule 7.2 be reduced?

Yes. NBIM supports reducing the limit on issues of securities without approval under Exceptions 6 and 7. The current framework, which permits dilution up to 99.9% without approval, is inconsistent with the stated purpose of Listing Rule 7.1—protecting existing shareholders from excessive dilution and maintaining their ownership rights. The framework allows ASX listed entities to issue a large amount of securities as part of domestic or foreign mergers and acquisitions without a shareholder vote.

The current exceptions also create an asymmetry in shareholder treatment. Target shareholders receive a vote on schemes of arrangement and can accept or reject takeover offers. Bidder shareholders—who fund the acquisition through dilution of their holdings—have no equivalent say. This inequity is difficult to reconcile with the principle that all shareholders should be treated fairly in corporate transactions.

There is also a broader case for shareholder approval requirements. Academic evidence[1] indicates

[1] Holderness, Clifford G., 2018. "Equity issuances and agency costs: The telling story of shareholder approval around the world," Journal of Financial Economics, Elsevier, vol. 129(3), pages 415-439; Becht, Marco & Polo, Andrea & Rossi, Stefano, 2016. "Does Mandatory Shareholder Voting Prevent Bad Acquisitions?," The Review of Financial Studies, Society for Financial Studies, vol. 29(11), pages 3035-3067

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that shareholder approval thresholds improve management discipline by requiring a stronger justification for significant transactions. The market recognises this effect—investors tend to view transactions more positively when they know management has had to clear a meaningful accountability hurdle.

Furthermore, large share issues can significantly dilute the existing shareholder base and, in foreign M&A cases, facilitate a shift of listing jurisdiction that fundamentally alters shareholder rights.

Q8: If the limit is reduced, should this be to 75%, 50%, 25% or another amount?

NBIM believes the limit for acquisition-related issues should be reduced to 20%. This is aligned with international broad-based limits on equities securities issuances without shareholder approval (NYSE, NASDAQ, HKEx, SGX, LSE) as well as the 20% limit under NBIM's published voting guidelines for issuance without pre-emptive rights.

We recommend that ASX considers including an additional limit for cumulative issuances under exceptions 6 and 7 over a period to avoid serial dilutive acquisitions. ASX should also clarify the voting threshold for exceptions 6 and 7.

Q10: 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?

We do not consider that competitive concerns are compelling. ASX has stated that requiring shareholder approval would impose additional transaction costs and timing and execution risk, and put listed entities at a competitive disadvantage to unlisted entities in the market for corporate mergers and acquisitions. However, other jurisdictions maintain competitive public M&A processes despite requiring approval for significant share issues. TSX applies a 25% limit for acquisition-related issues, and NYSE/NASDAQ apply 20% per-transaction limits, yet these markets remain active and competitive.

The requirement does not preclude transactions—it ensures that shareholders, who bear the dilution, have a voice in whether to proceed. Moreover, the 25% limit has precedent internationally and, based on ASX's data, would have applied to only approximately 4 transactions per year historically. Concerns about increased execution risk or negative impact on commercial terms, including any reverse break fee, are therefore manageable given the limited number of affected transactions.

Q11: 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?

We consider that the costs are proportionate and outweighed by the benefits. Direct costs would include the transaction costs and timing associated with seeking shareholder approval for acquisitions

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exceeding the 25% threshold. However, ASX's data suggests this change would affect approximately 4 transactions per year historically, which is manageable.

Potential benefits include:

- Protecting existing shareholders from excessive dilution and maintaining their ownership rights, consistent with the stated purpose of Listing Rule 7.1
- Ensuring equitable treatment between bidder and target shareholders in corporate transactions
- Preventing cascading consequences where large share issues significantly dilute the existing shareholder base or facilitate shifts in listing jurisdiction that fundamentally alter shareholder rights
- Alignment with international standards in comparable markets including TSX, NYSE, and NASDAQ

Given the significance of shareholder approval rights in major dilutive transactions and the limited number of transactions affected, we consider the benefits clearly outweigh the costs.

Q12: 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?

No. NBIM does not advocate for removing waivers for foreign M&A entirely. However, we consider that any waiver should be subject to the same 20% threshold as domestic transactions. This maintains the principle that comparable regulatory regimes receive comparable treatment while ensuring shareholder approval rights are consistently protected.

We consider that all waivers material to shareholders should be disclosed at the time a transaction is announced. There is no reason to maintain confidentiality once a transaction has been made public, and contemporaneous disclosure enables shareholders to understand the regulatory process that permitted the transaction. This position is consistent with NBIM's policy that we will not support mergers, acquisitions and other corporate transactions where there is insufficient transparency. As such, we welcome ASX's updates to Guidance Note 17 to require listed entities granted a waiver to disclose the nature and effect of the waiver, and the reasons for seeking it within one business day of it being granted.

Q13: 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 do not identify significant unintended consequences beyond those already considered. However, we note that certain technical matters will require careful consideration in any rule drafting:

Voting exclusions: Ensuring conflicted parties are appropriately excluded from voting on the relevant resolution

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Information requirements: Ensuring shareholders receive adequate information to make an informed decision

Flexibility for bid increases: Ensuring the rules accommodate adjustments to bid terms during the transaction process

We would welcome the opportunity to provide further input on these technical matters in the subsequent consultation on exposure draft amendments.

6.4. Invitation for stakeholder feedback

Taking account of the initial considerations that we have outlined above, ASX is not putting forward specific proposals currently about Listing Rule 11.1 or Chapter 11. However, we invite feedback from any stakeholders who see changes to these rules as a better way to address the issues that have been raised about security holder approval rights. We encourage any stakeholders providing this feedback to be specific about their concerns and the rules that they think are required to address those concerns and to comment on why the other proposals outlined in this consultation paper would not adequately address those concerns.

NBIM agrees with ASX that specific changes to Chapter 11/Listing Rule 11.1 are not required at this time, provided the other proposed changes are implemented.

The package of reforms across Issues 1–3, combined with recent enhanced waiver disclosure requirements, substantively addresses the core concerns of excessive dilution without consent, shifts in listing jurisdiction, and transparency of regulatory decisions. Introducing shareholder approval for any significant acquisition regardless of share issuance would represent a substantial expansion of approval requirements, which is likely disproportionate to the problems identified.

We also acknowledge concerns about the competitive positioning of public markets relative to private markets. Regulatory changes should be targeted at clear deficiencies rather than broad-based increases in approval requirements. Non-dilutive acquisitions funded by cash or debt remain appropriately within the board's decision-making authority, subject to existing legal duties.

However, we note that ASX retains discretion under Listing Rule 11.1.2 to require shareholder approval for significant changes to the nature or scale of activities. To enhance transparent and consistent exercise of this discretion, ASX should publish criteria or guidance on the factors it considers when determining whether shareholder approval should be required under Rule 11.1.2. Clear guidance would provide greater certainty for listed entities and their shareholders, and support consistent application across comparable transactions.

We support further consultation if evidence emerges that significant non-dilutive acquisitions are generating material shareholder harm not addressed by the current framework.

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