



Australian
Shareholders'
Association

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Ms Janine Ryan
General Manager, Legal
Office of General Counsel
ASX Limited
20 Bridge Street
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By email to regulatorypolicy@asx.com.au

**ASA SUBMISSION – REVERSE TAKEOVERS: SHAREHOLDER APPROVAL REQUIREMENTS –
EXPOSURE DRAFT LISTING RULE AMENDMENTS**

Dear Ms Ryan

The Australian Shareholders' Association (ASA) represents its members to promote and safeguard their interests in the Australian equity capital markets. The ASA is an independent not-for-profit organisation funded by and operating in the interests of its members, primarily individual and retail investors, self-managed superannuation fund (SMSF) trustees and investors generally seeking ASA's representation and support. ASA also represents those investors and shareholders who are not members, but follow the ASA through various means, as our relevance extends to the broader investor community.

We refer to ASX's paper entitled "Reverse Takeovers: Shareholder Approval Requirements – Exposure Draft Listing Rule Amendments" (the **Exposure Draft Listing Rule Amendments**) dated 12 April 2017. We also refer to ASA's submission to the 2015 ASX consultation paper dated 17 December 2015 (**Initial Submission**).

We are supportive of the move to introduce a bidder shareholder requirement for takeovers and schemes of arrangement where the bid is a 'reverse takeover'. However, we are disappointed that ASX has decided to proceed with a threshold of 100%. As set out in our Initial Submission, we believe a threshold of 100% is too high and fails to strike an appropriate balance between the interests of ASX listed companies and protecting the rights of shareholders.

Our view is that arguments relating to the indirect costs of seeking shareholder approval; the possibility of reducing the ability of ASX listed bidders to compete effectively in the market for corporate control; and the broader regulatory context for control transactions and capital raisings in other jurisdictions with which ASX drew comparisons appear to have carried too much weight in ASX's consideration of the appropriate threshold.

ASX's review of the takeovers and schemes of arrangement over a four and a half year period found there were only 18 reverse takeovers by Australian listed bidders that would have fallen within the 100% threshold and thus would have required shareholder approval under the new rules. This captures only 14% of bids by Australian listed bidders for Australian listed companies during this period, which is a very small proportion of total bids. As such, we do not agree with ASX's assertion that adoption of a lower threshold would represent a fundamental change in the regulation of control transactions in Australia.

Whilst we understand ASX is not seeking further feedback on an alternative threshold, we recommend that a threshold of 50% would be more appropriate. Based on the data provided by ASX, this would capture approximately 30% of all bids by Australian listed bidders for Australian companies. This would still only represent a small fraction of total bids.

We acknowledge that ASX intends to closely monitor transactions that appear to be deliberately structured to avoid the shareholder approval requirement for reverse takeovers and is open to exercising its discretionary powers to ensure compliance with the spirit, intent and purpose of the Listing Rules. To this end, we would hope that ASX will exercise its discretion to prevent companies from structuring transactions to avoid seeking shareholder approval.

Whilst we would have preferred that an independent expert's report be required, we accept that the new guidance in Guidance Note 21 on the information ASX expects to be disclosed in relation to a reverse takeover will be beneficial to shareholders.

We have no issues with the other proposed amendments to the Listing Rules.

If you have any questions about this submission, please do not hesitate to contact me on (02) 9252 4244.

Yours sincerely

A handwritten signature in black ink, appearing to be 'J Fox', with a stylized flourish extending from the top of the 'F'.

Judith Fox
Chief Executive Officer
Australian Shareholders' Association