



17 December 2015

Office of General Counsel  
ASX Limited  
20 Bridge Street, Sydney  
NSW 2000

By Email: [regulatorypolicy@asx.com.au](mailto:regulatorypolicy@asx.com.au)

Dear Gary Hobourn

**ASX REVERSE TAKEOVERS SUBMISSION**

The Financial Services Council welcomes the opportunity to make a submission to the ASX Consultation Paper on Reverse Takeovers – Shareholder Approval Requirements for Listed Company Mergers.

The Financial Services Council (FSC) represents Australia's retail and wholesale funds management businesses, superannuation funds, life insurers, financial advisory networks, trustee companies and public trustees. The FSC has over 125 members who are responsible for investing more than \$2.5 trillion on behalf of 11 million Australians. The pool of funds under management is larger than Australia's GDP and the capitalisation of the Australian Securities Exchange and is the third largest pool of managed funds in the world.

The FSC promotes best practice for the financial services industry by setting mandatory Standards for its members and providing Guidance Notes to assist in operational efficiency.

We congratulate the ASX on developing this consultation paper and welcome the discussion of these issues.

*Reverse Takeovers*

The FSC believes that there should be a change to the listing rules on this issue and a change from the status quo.

We believe minority shareholder rights are currently insufficiently protected, and the nature of the problem warrants changes to the listing rules so that these protections are enhanced. That is, there is a significant gap in the current regulatory framework.

We are supportive of the following option: “require shareholder approval for scrip takeovers based on the level of dilution.”

The issue of dilution (i.e. loss of control) is more important and would outweigh the potential downsides in changing the listing rules.

We agree with “requiring a bidder to seek shareholder approval where there is scrip for scrip offer and the issue of new securities exceeds 100% of the bidder’s existing share capital”. However the 100% dilution level as proposed is too high.

In line with other comparable jurisdictions, we believe a 20-30% dilution level is appropriate. This should be a ‘bright line’ test, rather than a discretionary test. As such, a 25% level would be appropriate for two reasons:

- It is in line with other jurisdictions; and
- It sufficiently protects minority shareholders.

If the level of 100% was pursued, Australia would remain an outlier as compared to other jurisdictions.

We do not believe that the reasons for maintaining the status quo are compelling enough to outweigh the need for protections on minority shareholders. Further, the incidences of reverse takeovers have increased in recent years. The listing rules should be changed to ensure protections are in place for the future.

### **Recommendations**

1. Require shareholder approval for scrip takeovers based on their level of dilution.
2. The shareholder approval requirement threshold should be 25% of bidder’s existing share capital and this should be a ‘bright line’ test.

Should you wish to discuss this submission further please do not hesitate to contact me on (02) 9299 3022.

Yours sincerely,

Sara Dix

Policy Manager, Investment and Global Markets