NZSUPERFUND
Te Kaitiaki Tāhua Penihana
Kaumatua ō Aotearoa

16th December 2015

Attention: Gary Hobourn
Office of General Counsel ASX Limited
20 Bridge Street
Sydney
NSW 2000
Australia
regulatorypolicy@asx.com.au

Dear Gary,

ASX Consultation Reverse Takeovers

Please find attached our submission to the ASX consultation on Reverse Takeovers and Shareholder Approval Requirements for Listed Company Mergers.

We commend ASX for identifying this as an area of importance to the rights of shareholders in listed companies.

In particular, we want to emphasise the principle that shareholders should have the right to vote on extraordinary transactions which result in substantial changes to the company in which they invest, or may materially dilute them as shareholders. Reverse Takeovers are significant transactions where Target company shareholders are able to influence the outcome of the merger through a vote. The ASX Rules should afford Bidder company shareholders the same rights but currently do not do so.

We aim to encourage good corporate governance and respect for shareholder rights in the markets in which we invest. We believe this is important to long-term shareholder value and the attractiveness of those markets to companies and investors.

Yours sincerely,

Adrian Orr
Chief Executive Officer

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New Zealand Superannuation Fund (NZSF) submission to ASX consultation on Reverse Takeovers 16 December 2015

Annexure A – Response to ASX Questions for Consultation

1. (a) Do you think there is a gap in the Australian regulatory framework that warrants a change from the status quo? (b) Do you consider that there are characteristics of the Australian market which justify a different approach to other jurisdictions (taking into account factors such as other sources of financing)?

(a) Yes.

There has been a new trend in "reverse takeover" schemes amongst ASX-listed entities in recent years. This has highlighted a gap in the Australian market. Boards of Bidder companies do not have to seek shareholder approval for these extraordinary transactions which result in substantial changes to the company, such as in the nature or scale of its operations.

Major markets including London, Hong Kong, NYSE and Singapore would require shareholder approval for similar reverse takeover actions. Requiring a shareholder vote for such transactions is supported by international best practice standards such as the G20/OECD Principles of Corporate Governance, which state that "*Shareholders should be sufficiently informed about, and have the right to approve or participate in, decisions concerning fundamental corporate changes such as …. the authorisation of additional shares ... (and) extraordinary transactions, including the transfer of all or substantially all assets, that in effect result in the sale of the company*."

Under ASX listing rule 7.2, for "reverse takeover" transactions the shareholders of the Bidder do not have the right to vote. Only shareholders of the Target company have that right – even though the Bidder ends up as the smaller part of the newly formed whole company.

Examples of such deals occurring in S&P/ASX300 companies in the past two years include: **Roc Oil's 'bid' for Horizon Oil; Federation Centres' bid for Novion Property Group and Independence Group's bid for Sirius Resources.**

Companies regularly hold meetings to seek approval for much smaller transactions such as share issues to directors or minor share placements – yet companies are not required to seek such approval in these much more significant situations.

(b) No.

2. (a) Do you agree with the implementation of a shareholder approval requirement for issues of securities in excess of 100% of existing capital as consideration for a merger? (b) If not, why not? (c) If you consider an alternative threshold would be more appropriate, what would that threshold be? (d) Are there any alternative indicia you consider should be taken into account?

(a) No. We support shareholder approval requirements for the issue of securities but view a threshold of 100% of existing capital as excessive.

(b) NZSF considers the 100% threshold to be far too high, as it undermines the rights of shareholders and is out-of-line with practice in a number of other markets.

(c) Should the transaction where shares are issues not be pro rata, we believe that listed companies should not be able to materially dilute shareholders without their approval. This is

consistent with the NZ Corporate Governance Forum Guidelines. By way of example, in situations where shareholders are diluted through the issue of shares we also view a threshold of 20% as much too high.

4. Do you agree that, if a shareholder approval requirement is implemented, it should be a "bright line" test rather than a discretionary test?

Yes. This removes uncertainty and is best for all parties.

5. (a) Do you think the proposal would have a material impact on the ability of ASX listed entities to compete effectively in the market for corporate control? (b) Do you think any particular sectors of the Australian market would be more significantly affected than others?

(a) No.

In other markets where this requirement exists there continues to be successful listed company M&A activity. Applying the rules could lead to deals being rejected if it is not in the interests of the shareholders of the bidder. This is beneficial for the market as it applies increased rigour to large corporate actions and drives better alignment between those developing and promoting the deal and the company's shareholders.

7. What do you consider may be the direct and indirect costs of the consultation proposal? Do those costs outweigh the potential benefits? If so, please provide the basis for that view? Are there any characteristics of Australian shareholder approval requirements that may make it more difficult to obtain shareholder approval than other jurisdictions?

More important in our view is the principle that it is shareholders that face the downside risk of significant M&A activities and they who should have a say – be they bidder or target. The losses to shareholders when M&As go wrong far outweigh the increase in transactional cost to companies or cost of a rule change to give shareholders the right to vote.

Also , the cost of convening a meeting, including with electronic means of voting should not be significant in terms of the overall costs of M&A transactions. The target company also has the cost of seeking shareholder approval.

As a matter of course companies convene meetings to seek shareholder approval for much smaller corporate actions such as equity raising.

8. Would such a requirement make transactions more difficult to complete? If so, how? What are the potential timing and disclosure implications of requiring shareholder approval for reverse takeovers?

These approvals are regularly built into the timelines for transactions in a number of other markets.

10. (a) Do you think such a proposal would have an impact on the willingness of issuers to list, or remain listed, on ASX? (b) Alternatively, do you consider failure to implement any changes would impact on the willingness of investors to invest in entities listed on ASX?

(a) No.
(b) Pursuing a reverse takeover is not a primary purpose of companies choosing to list on an exchange – and nor should it be. Other large markets already have higher governance standards in relation to this issue. Given target company shareholders already have a vote, and reverse takeovers are rare (albeit increasing in use), this gap in governance standards should be addressed by the ASX.

(c) Investors are increasingly focused on good governance - and shareholder rights are amongst the factors they take into account when analyzing and comparing the markets in which they invest. Companies do not necessarily look for markets with weaker shareholder rights but for markets where good governance helps to attract a wide range of shareholders and are therefore better able to meet their access to capital and liquidity requirements.