

ASX reverse takeovers rule amendments

ASX has released [Response to Consultation on Reverse Takeovers](#), together with [Exposure Draft Listing Rule Amendments](#). The proposed amendments will require a bidder to obtain shareholder approval under Listing Rule 7.1 for a reverse takeover. The proposed amendments implement the proposal ASX consulted on in November 2015.

ASX's review of voting exclusions in the context of reverse takeovers has also highlighted additional amendments to the voting exclusions in the Listing Rules that ASX considers should apply to all transactions. Those broader amendments are set out in further detail below.

Definition of reverse takeover

A "reverse takeover" will be defined as a takeover bid or a merger by way of scheme of arrangement under Part 5.1 of the Corporations Act where an entity is proposing to acquire securities of another body and the aggregate number of equity securities issued or to be issued by the entity:

- under the takeover bid or scheme; and/or
- to fund the cash consideration payable under the takeover bid or scheme,

is equal to or greater than the number of fully paid ordinary securities on issue in the entity at the date of announcement of the takeover bid or scheme. Separate issues may be aggregated if, in ASX's opinion, they form part of the same commercial transaction.

Implementing the requirement for shareholder approval

The requirement in Listing Rule 7.1 to obtain shareholder approval for issues of securities above the 15% threshold in that rule is currently subject to two relevant exceptions in Listing Rule 7.2, exceptions 5 and 6 for issues made under, or to fund the cash consideration under, a merger by way of scheme of arrangement under Part 5.1 of the Corporations Act.

ASX proposes to amend Listing Rule 7.2, exceptions 5 and 6 so that those exceptions do not apply to issues under, or to fund, a reverse takeover. This will have the effect that an issue of securities under, or to fund, a reverse takeover will require approval under Listing Rule 7.1.

Disclosure requirements

ASX Listing Rule 7.3.8 sets out the information required to be disclosed in a notice of meeting seeking approval under Listing Rule 7.1. ASX proposes to amend this rule to require bidders to disclose information 'in relation to the reverse takeover'.

ASX will be issuing a new Guidance Note 21 'The Restrictions on Issuing Equity Securities in Chapter 7 of the Listing Rules', which will outline the information ASX expects to be disclosed in this regard. ASX's preliminary guidance on disclosure requirements for a shareholder approval for a reverse takeover is set out in the Response to Consultation.

Voting exclusions

Listing Rule 7.3.8 requires a notice of meeting proposing a resolution to approve an issue of securities under Listing Rule 7.1 to include a voting exclusion statement.

ASX proposes to amend the voting exclusion requirement for resolutions under Listing Rule 7.1 so that it applies to the following persons and their associates:

- where the resolution relates to a proposed issue under a reverse takeover - the reverse takeover target and any person who will obtain a material benefit as a result of the reverse takeover or the proposed issue (except a benefit solely by reason of being the holder of ordinary securities in the entity or the reverse takeover target);
- where the resolution relates to a proposed issue to fund a reverse takeover - the reverse takeover target, any person who is expected to participate in the proposed issue, and any person who will obtain a material benefit as a result of the reverse takeover or the proposed issue (except a benefit solely by reason of being the holder of ordinary securities in the entity or the reverse takeover target); and
- in any other case - any person who is expected to participate in, or who will obtain a material benefit as a result of, the proposed issue (except a benefit solely by reason of being the holder of ordinary securities in the entity).

These amendments would generally permit common shareholders in the bidder and target to vote on the resolution to approve the reverse takeover unless the shareholder has an additional interest that is materially different to other bidder or target shareholders.

The proposed new Guidance Note 21 mentioned previously will outline what ASX considers to be "material benefits" for these purposes. ASX's preliminary guidance on what may constitute a 'material benefit' is set out in the Response to Consultation.

More broadly, ASX proposes to limit the voting exclusion in Listing Rule 14.11 to so that it only applies to excluded persons and their associates who vote in favour of a resolution under the Listing Rules. Excluded persons and their associates will be permitted to vote against the



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resolution. ASX also proposes to amend the definition of 'associate' in the Listing Rules to address some gaps in its coverage. These changes will apply across the board and will not be limited to resolutions under Listing Rule 7.1.

Time within which securities must be issued

Listing Rule 7.3.2 currently requires a notice of meeting proposing a resolution to approve an issue of securities under Listing Rule 7.1 to disclose that the securities will be issued within 3 months of the approval being given. ASX proposes to extend this period to 6 months where an issue is being made under, or to fund, a reverse takeover.