

21 December 2015

via email: regulatorypolicy@asx.com.au

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

Attention: Gary Hobourn

Consultation Paper – Reverse Takeovers: Consultation on Shareholder Approval Requirements for Listed Company Mergers

CGI Glass Lewis appreciates the opportunity to comment on the Consultation Paper issued by ASX regarding the shareholder approval requirements for listed company mergers. As a starting point, CGI Glass Lewis agrees with the premise that shareholders should have a say in matters that will significantly dilute their ownership interests or otherwise transform the nature of the entity whose shares they own. With this guiding principle, the focus of this response is limited to answering the most material questions posed by ASX.

CGI Glass Lewis has been providing in-depth proxy research and analysis on ASX-listed companies from its Sydney headquarters since 1994, and is a subsidiary of Glass, Lewis & Co. (“Glass Lewis”), a leading independent governance services firm that provides proxy voting research and recommendations to a global client base of over 1,000 institutional investors that collectively manage more than US\$20 trillion in assets.

Clients use CGI Glass Lewis research to assist them with their proxy voting decisions and to engage with companies before and after shareholder meetings. Glass Lewis’ web-based vote management system, ViewPoint, provides clients with the ability to reconcile and vote ballots according to custom voting guidelines and to audit, report and disclose their proxy votes. Glass Lewis is a portfolio company of the Ontario Teachers’ Pension Plan Board (“OTPP”) and Alberta Investment Management Corp. (“AIMCo”).

Thank you in advance for your consideration and please do not hesitate to contact us if you would like to discuss any aspect of our submission in more detail.

Respectfully Submitted,



Daniel J Smith
General Manager and Director of Research
CGI Glass Lewis

1. Do you think there is a gap in the Australian regulatory framework that warrants a change from the status quo? 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)?

CGI Glass Lewis believes there is a gap in the current Australian regulatory framework regarding reverse takeovers since such transactions do not require shareholder approval whereas, if structured as a more typical takeover, they would be subject to a shareholder vote. CGI Glass Lewis does not believe there are unique characteristics in the Australian market which justify a different approach compared to other jurisdictions.

In general, CGI Glass Lewis believes that management and the board are in a position to make informed decisions regarding a company's business operations and strategic alternatives, including potential mergers, acquisitions or other transactions. As such, we believe a well-functioning board and management team deserve some, but not complete, deference from shareholders on such matters. On the other hand, we believe shareholders, as owners of the company, should be provided with a platform to express their views on major transactions that will significantly affect their ownership interests or the value of their investments. Typically, we note that such a platform for shareholders takes the form of a shareholder vote on a proposed transaction.

The exception provided under the Listing Rule 7.1 exempting companies from having to seek shareholder approval for a reverse takeover on issues of shares in excess of 15% is at odds with what we consider to be a fundamental tenet of standard corporate governance practices—namely, the right of shareholders to have a say in matters that will significantly dilute their ownership interests or otherwise transform the nature of the entity whose shares they own. CGI Glass Lewis does not believe there is any justification for this disparate treatment of reverse mergers compared to traditional mergers, with rules requiring a shareholder vote on the latter but not the former simply based on the structure of the transaction.

2. 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? If not, why not? If you consider an alternative threshold would be more appropriate, what would that threshold be? Are there any alternative indicia you consider should be taken into account?

As indicated above, CGI Glass Lewis favours a regulatory regime that provide greater opportunity for shareholder input on material issues of securities including as consideration for a merger. We believe implementation of a shareholder approval requirement for issues of securities in excess of 100% of existing capital as consideration for a merger is too lax a threshold, in light of three primary factors:

1. The existing 15% threshold under ASX Listing Rule 7.1 for issues other than as consideration for a merger;
2. The existing requirement under Section 606 of the Corporations Act 2001 that prohibits a person from acquiring a relevant interested in the voting securities of an entity that would result in any person's voting power exceeding 20%, except through a specified exception such as a scheme of arrangement or takeover bid; and
3. International comparisons of shareholder approval requirements for issues of securities.

In light of these factors, we believe a more appropriate threshold would be equal or substantially close to the existing 15% threshold under ASX Listing Rule 7.1.

3. If a shareholder approval requirement is implemented, do you think it should also be applied to other issues of securities in excess of 100% that are used to fund cash consideration for a takeover or scheme of arrangement? For example, rights issues under listing rule 7.2 exception 1?

Our view that shareholders should have the opportunity to opine on major transactions that are funded through the issue of securities is agnostic to the process by which the securities are issued. In other words, we favour greater opportunity for shareholder input on both pro rata and non-pro rata issues of securities to fund acquisitions.

Offering shareholders the ability to participate in a rights issue whose proceeds will fund a material transaction is not the same as giving shareholders the right to opine on that transaction. On the one hand, some shareholders may be supportive of the transaction but may not have the capacity to take up some or all of their pro rata entitlements. On the other hand, other shareholders may not be supportive of the transaction but do not wish to have their ownership diluted and thus take up their pro rata entitlements. As such, we are supportive of separating the shareholder decision to approve a major transaction from the shareholder decision to participate in a rights issue in connection with such a transaction.

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

Should a shareholder approval requirement be implemented, we believe it should be a “bright line” test rather than a discretionary test because the former test would provide for a more predictable and consistent results in its application. By contrast, a discretionary test would potentially bog down transactions in legal or regulatory quagmires if there were doubt that the discretion had been exercised appropriately.

5. 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? Do you think any particular sectors of the Australian market would be more significantly affected than others?

We do not believe the proposal would have a material impact on the ability of ASX-listed entities to compete effectively in the market for corporate control given that the reverse takeover mechanism has not been widely used up to this point (high-profile cases of Gloucester Coal Limited/Whitehaven Coal Limited in 2009, Roc Oil Limited/Horizon Oil Limited in 2014 and Federation Centres/Novion Property Group in 2015 notwithstanding).

However, we note that a number of ASX-listed micro-cap mining companies have effectively become “shell” companies since the end of the mining boom. Such listed entities have become prime targets for privately held and/or foreign companies looking to list on the ASX (e.g. 1-Page Limited, formerly InterMet Resources Limited). The proposal could have an impact on the ease with which these backdoor listings could occur.

8. If a shareholder approval requirement is implemented, do you consider any changes to the standard voting exclusions or disclosure requirements would be required? For example, should target shareholders who also hold shares in the bidder be permitted to vote, subject to the usual exclusions for interested or related parties? Should an independent expert's report be required?

We do not consider any changes to the standard voting exclusions or disclosure requirements would be required if a shareholder approval requirement is implemented. Many broadly diversified shareholders (active and index investors alike) often have exposure to both sides of a merger of two listed entities. We do not feel it would be appropriate to exclude such shareholders from voting on material transactions; such an approach would unnecessarily disenfranchise investors with stakes in both companies without a clear benefit in return.

In respect of the requirement to provide an independent expert's report, we recognise that such a requirement would add to the cost of transactions. However, CGA Glass Lewis believes that, in most cases, the costs would be outweighed by the benefits to shareholders (and the companies) of gaining an independent review of the transaction. Similar approaches are employed in other markets like the United States, where it is commonplace for bidder companies to retain a financial advisor to produce a so-called 'fairness opinion' on the proposed transaction, even though there is no legal requirement to do so. Such a normative approach could be replicated in the Australian market with encouragement from the ASX using an 'if not, why not' approach.

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

We do not believe the introduction of a shareholder vote requirement on the issue of securities to fund material transactions would have a material impact on the willingness of issuers to list, or remain listed, on ASX, given that the main attractiveness of listing on ASX lies in the access to a large pool of capital to fund growth, a liquid market to trade the company's securities and a higher investor profile, among other benefits. Further, by definition such transactions are extraordinary events, mitigating concerns about additional requirements inhibiting issuers listing on ASX.

CGI Glass Lewis Fact Sheet

CGI Glass Lewis is a subsidiary of Glass, Lewis & Co., the leading independent governance analysis and proxy voting firm with a global client base of 1,000+ institutions that collectively manage more than \$20 trillion in assets. Glass Lewis empowers institutional investors to make sound decisions at more than 20,000 meetings a year by uncovering and assessing governance, business, legal, political and accounting risks at issuers domiciled in 100 countries. Glass Lewis is a portfolio company of the Ontario Teachers' Pension Plan Board ("OTPP") and Alberta Investment Management Corp. ("AIMCo"), two of the largest pension plan investors in the world.

CGI Glass Lewis has been providing in-depth proxy research on ASX-listed companies from its Sydney headquarters since 1994 and provides local-market support for all proxy voting clients in Australia and Asia.

Key details regarding CGI Glass Lewis operations include:

Diversity: The Sydney-based team comes from a proudly diverse background representing 6 nationalities, 12 languages, 40% female and a wide variety of professional experience as lawyers, chartered company secretaries, compliance officers, project managers, investment analysts, financial analysts, research analysts, financial advisers, managers, client relationship managers, educators, investors, journalists and directors.

Research analysts: The Sydney-based analyst team currently includes 8 permanent research staff with over 50 years combined experience in proxy advisory and educated with more than a dozen undergraduate and postgraduate degrees.

Research coverage: The Sydney-based research team provides comprehensive research for all ASX, NZX and JSE-listed companies. In 2015, this universe included approximately 750 publicly-traded entities. This team also includes specialised local-market support for the global M&A and ESG research teams.

Research technology: Glass Lewis' proprietary research technology enables analysts to efficiently convert unstructured data from company disclosures and rapidly produce structured and consistent research with multi-layered editing that ensures superior quality control and accuracy. Our technology enables us to publish research through multiple channels including glasslewis.net, Equilar, Bloomberg, API, FTP and our proxy voting platform ViewPoint, the leader in usability, flexibility and transparency since its 2005 launch.

Engagement: The Sydney-based research team actively engages with ASX-listed company board members (see next page), institutional clients, government and other stakeholders/advisers.

Client services: The Sydney-based client services and operations team provides local-market support for all proxy voting clients based in Australia and Asia, which currently oversee in excess of \$1 trillion in assets. This team also provides operational support to North American, Asian and European clients.

E & S Advisory Papers: In association with EIRIS' Australian partner CAER, this research and ratings product allows clients to specifically identify and manage E&S risks and opportunities within their portfolios.

Governance & Remuneration Forums: In March 2016, CGI Glass Lewis co-hosts its tenth annual forums in Sydney and Perth (the event is also held biennially in Melbourne). The Forums provide a unique opportunity for institutional investors, corporate executives, non-executive directors and other key stakeholders to have a frank and practical exchange on relevant and current governance topics.

Corporate Engagement Policy

Corporate meetings: Continuing a practice since CGI's founding, in 2015 the CGI Glass Lewis research team **met with over 200 ASX-listed companies**. The purpose of such meetings is to learn about company practices, foster dialogue and understanding of CGI Glass Lewis policies and services, and to provide transparency.

Meetyl and corporate access: Meetyl, a Glass Lewis company, is a web-based platform that connects institutional investors directly to companies so they can schedule meetings and non-deal road shows as an alternative or complement to the intermediated "corporate access" status quo. See www.meetyl.com for more information.

Corporate subscription: Companies, and other stakeholders, may purchase our research products, but a subscription is not required in order to engage with CGI Glass Lewis.

Transparency: CGI Glass Lewis **discloses engagement in all our proxy research papers**, including whether we have attempted to engage with a company during the year, when that engagement took place and the general matters discussed (we also note if a meeting did not take place). In addition, CGI Glass Lewis also **discloses whether a company has purchased the same research**.

Solicitation period: When CGI Glass Lewis analysts require clarification on a particular issue they will reach out to companies, but otherwise will not meet with companies during the solicitation period to discuss the details of their meeting or the merits of specific proposals. The solicitation period begins on the date the notice of meeting is released and ends on the date of the meeting.

Availability: Outside the solicitation period, CGI Glass Lewis **analysts are open to meeting with any company** to provide clarification as to the CGI Glass Lewis business model, operations, guidelines, and perspective on general governance items, as well as to learn about the specific aspects of that company. However, CGI Glass Lewis **cannot guarantee availability during proxy season periods** (April, May, September, October, November) when timely research for clients is the top priority.

Publicly available information: CGI Glass Lewis proxy research and recommendations are based solely on publicly available information that is available to all shareholders.

Additional disclosures: Companies are also welcome to notify CGI Glass Lewis when additional disclosures have been made during the solicitation period, but subsequent to the publishing of the CGI Glass Lewis research report. If the new information would be useful for clients and there is a reasonable amount of time prior to the meeting date, CGI Glass Lewis **will consider republishing its research report with the new information** and will always highlight whether or not any of its recommendations have changed as a result.

Proxy Talk: Based on client demand, CGI Glass Lewis will host "Proxy Talk" conference calls to facilitate an in depth discussion of a specific meeting, proposal or issue. CGI Glass Lewis clients are able to listen to the call and submit questions to the speakers, with representatives from the CGI Glass Lewis research team serving as moderators. This is an effective way for companies to reach clients directly, empowering clients and fostering improved disclosure and further colour on specific issues.

Contact: A company can **schedule a meeting or purchase research** by emailing CGIGL@glasslewis.com or calling +61 (2) 9299 9266.