

BlackRock

Overview

BlackRock Investment Management (Australia) Limited (**BlackRock**) appreciates the opportunity to comment on the *Foreign ownership of Australian media assets: review of legislative requirements consultation paper (Consultation Paper)*.

BlackRock fully understands the importance of monitoring the foreign ownership of media assets. However, as part of the Australian funds management industry, we submit that as a passive fiduciary investor who invests in listed stocks, the material compliance burden and compliance cost of the regime substantially outweighs any benefits. This is particularly as the protection sought is already provided for in other regulatory regimes, including the Foreign Acquisitions and Takeovers Act.

BlackRock is an Australian public company and licensed provider of financial services. In Australia, BlackRock invests on behalf of institutional and retail investors. The vast majority of the underlying investors in BlackRock's funds are Australian residents. BlackRock is a wholly owned subsidiary of BlackRock, Inc. which is headquartered in New York and a publicly traded company on the New York Stock Exchange. As a result, BlackRock, Inc and its subsidiaries in Australia are "foreign stakeholders" under the *Broadcasting Services Act 1992 (Cth) (BSA)* and are required to report on the ownership of Australian Media Companies.

On behalf of its investors, BlackRock regularly, and almost exclusively, acquires and disposes of interests in Australian listed companies that have Australian Media Company subsidiaries. It does so as a fiduciary and pursuant to fulfilling investment objectives on behalf of its underlying investors. BlackRock has no interest in the ownership, control or operation of underlying Australian Media Companies. Investments in the listed holding companies of Australian Media Companies are made for the purpose of gaining exposure to Australia's equity market and are never made for the purpose of obtaining control over an Australian Media Company subsidiary.

Submission

The Explanatory Memorandum to the *Broadcasting Legislation Amendment (Foreign Media Ownership and Community Radio) Bill 2017* states:

"The key policy objective in relation to foreign investment reporting is to ensure that the Australian public is able to easily access information regarding the levels and sources of foreign investment in mainstream media outlets. An ancillary or secondary objective is to ensure that consideration of media policy issues by Government is informed by an accurate and up-to-date assessment of the levels and sources of foreign ownership of the Australian media."

BlackRock submits that the register of foreign investment in Australian Media Companies (the Register) is not meeting the key, nor the ancillary, objectives underpinning its creation and should be abolished for the reasons set out below.

- 1. Foreign fund managers are fiduciaries that act on behalf of Australian investors and do not seek control or influence**

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Participants in the funds management industry need to be distinguished from entities that seek to control or operate media companies.

When BlackRock, or indeed any fund manager licensed in Australia (whether they are foreign-owned or otherwise), invests in the listed holding company of an Australian Media Company, it does so on behalf, and in the best financial interests, of the underlying investors in the fund. BlackRock is caught by this requirement as it is owned by BlackRock, Inc., a NYSE listed entity and therefore technically makes this a foreign investment. However, the vast majority of investors in Australian managed investment schemes that BlackRock operates in Australia and that may invest in listed media companies are Australian residents. As a passive investment, there is no intention or ability to control the listed media stock in any way (such as to appoint directors or dictate strategy).

2. Disclosure and controls against foreign investment is already in place

As stated above, in almost all cases, BlackRock invests in the listed holding company of an Australian Media Company. The share registries of listed companies are publicly available. Further, substantial holdings notification requirements apply to inform the market when any investor acquires a substantial holding (5% or more) in any listed company, including those carrying on the business of an Australian Media Company. In addition, under the Foreign Acquisitions and Takeovers Act, foreign persons are required to obtain FIRB approval for acquisitions of interests 10% or more in an Australian Media Company.

It is unclear what purpose over and above, or in addition to, these other regimes the Registry fulfils for the Australian public or the Australian Government. As a global asset manager, we cannot find a similar obligation anywhere else in the world that imposes a disclosure obligation on foreign persons holding media companies at 2.5%. A 2.5% disclosure threshold does not signify any influence or control over the holding in any company. Recognition of the limited usefulness of a low threshold is reflected by the February 2022 amendments to the Foreign Acquisitions and Takeovers Regulations, which lifted the threshold for approval for an Australian Media Business from 5% to 10%, where the Explanatory Statement noted “The amendments to the definition and the threshold test support a better balance between welcoming foreign investment and protecting national interests in relation to media investments.”

3. Compliance burden where Australian investors are bearing the cost

Investing in listed securities on behalf of investors is a significant part of the ‘business as usual’ activities of fund managers. However, this obligation is incurred only by foreign owned fund managers and not by Australian owned fund managers undertaking the same activity.

The BSA imposes a material compliance burden on funds, as it captures ongoing, legitimate business activity. While fund managers invest in holding companies listed on a public exchange, the BSA requires identification and disclosure of the ownership of the underlying Australian Media Company. This is not what fund managers have invested in. Even with a robust compliance and monitoring framework, there is frequently insufficient publicly available information to meet the BSA reporting requirement (such as knowledge of the corporate structure or changes to a corporate structure). Fund managers who buy and sell listed stocks are not able to undertake the level of due diligence required under the BSA. The timing and tracing requirements also materially add to the reporting requirements. The complexity in compliance with the BSA regime is reflected in a 25-page guidance note. Full compliance with the BSA regime is costly, difficult and at times impossible.

As compliance with BSA is a cost of doing business for foreign-owned fund managers, these costs could be passed on to the underlying investors, reducing the wealth of Australian investors. The underlying investors in Australian-owned fund managers are not subject to the BSA regime and do not incur the same costs, despite the investment activities of both foreign-owned and Australian-owned managers being virtually identical. This distorts competition in the market because foreign-owned fund managers have to meet these costs.

4. Limited benefit of disclosure

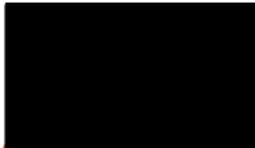
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The Consultation Paper states that the landing page for the Register has averaged one unique page visit per day. There is little, if any, justification for the continued existence of the Register when it is not being used as intended. Even if this register is accessed, it is noted that many entities are fund managers, who are not in the business of controlling or operating media companies. To the extent a fund manager has holdings that are higher than 2.5%, their holding is either disclosed or subject to approval through other regulatory channels.

Conclusion

As this submission explains, the Register does not further the objectives for which it was created. It does not serve any useful purpose for the Australian public or for the Australian Government and presents a significant and unfair compliance burden that only applies to foreign-owned fund managers carrying out legitimate business activities on behalf of Australian resident investors. This is particularly so, as the protection sought under the BSA regime is already provided for in other regulatory regimes, including the Foreign Acquisitions and Takeovers Act.

The BSA regime is not fit for purpose and does not support business and jobs growth and should be amended at the earliest opportunity.



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