

ASX Listings Compliance Activities Report

1 July 2020 – 30 September 2020



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Background

As the licensed operator of a listing market, ASX is obliged under the Corporations Act 2001 (Cth)¹ to have adequate arrangements for monitoring and enforcing compliance with its listing rules. Those arrangements are administered by the ASX Listings Compliance team.

The ASX Listings Compliance team also assesses whether applications for admission to the ASX official list conform to the requirements of the listing rules and processes applications for waivers of the ASX listing rules.

ASX's listing rules serve the interests of listed entities and investors, both of whom have a vital interest in maintaining the reputation and integrity of the ASX market and ensuring that it is internationally competitive and facilitates efficient capital raising.

ASX has an absolute discretion concerning the admission of an entity to the official list and the quotation of its securities. ASX also has broad discretions under the listing rules whether to require or waive compliance with the listing rules in a particular case, to remove an entity from the official list and to suspend its securities from quotation.

In exercising these discretions, ASX takes into account the principles on which the listing rules are based (as set out in the introduction to the listing rules) and the imperative of maintaining the reputation, integrity and efficiency of the ASX market.

To enhance transparency and assist stakeholders to understand how ASX interprets and applies the listing rules, ASX publishes on a quarterly basis high level reasons why it has declined certain listing and waiver applications, as well as information about some of its other activities monitoring and enforcing compliance with the listing rules.²

This is a point-in-time publication reflecting listing applications declined by ASX over the period of this report. It should be noted that some of the entities whose listing applications have been declined by ASX and mentioned in this or in earlier editions of this publication may have since restructured their proposals to address ASX's concerns.

This report excludes data on ASX Debt Issuers.

¹ Referred to in this publication as the 'Corporations Act'. Unless otherwise indicated, references in this publication to a section of an Act are to a section of the Corporations Act.

² This information is published by ASX in performance of its obligations under the Corporations Act and in particular sections 792A(a) and (c). ASX also publishes details of waivers granted by ASX on the ASX website twice monthly in the form of a waivers register: see the 'Waivers' tab at <http://www.asx.com.au/regulation/rules/asx-listing-rules.htm>.

Listing applications

During the period of this report, ASX admitted and quoted 16 entities and reinstated 1 entity to quotation following the completion of a backdoor listing. Further, ASX rejected³ the following 6 applications seeking admission and 6 applications seeking to be reinstated to quotation via a backdoor listing.

Entity	Reasons for rejection
Entity A	ASX had concerns about the early stage of the business.
Entity B 2 separate rejections	ASX had concerns about the limited operating and financial history and the proposed capital structure.
Entity C	ASX had concerns about the absence of any substantial connection between the entity and Australia, the early stage of the proposed Australian operations, numerous related party transactions and the proposed composition of the board.
Entity D	ASX had concerns about the emerging market the entity was carrying on its business in.
Entity E	ASX had concerns about the entity's processing operations being carried out in an emerging market, the limited experience of the board and the proposed capital structure.
Entity F	ASX had concerns about the early stage of the proposed business operations and the high number of performance securities proposed to be issued to directors' and employees.
Entity G	ASX had concerns about the proposed capital structure, the composition of the board and the absence of any substantial connection between the entity and Australia.
Entity H	ASX had concerns about the structure of its operations, composition of the board and the limited connection to Australia.
Entity I	ASX had concerns about the early stage nature of the proposed business operations and limited operating and financial history.
Entity J	ASX had concerns about the proposed minority stake in a single real estate property asset to be re-developed and the related party aspects of the transaction.
Entity K	ASX had concerns about the emerging market the entity was carrying on its business in.

³ Rejections are based on the following applications: In-principle advice on the application of Listing Rule 1.1 condition 1 and Listing Rule 1.19, Appendix 1A and Appendix 1C. ASX will also include rejections of an approved application that are subsequently rejected before admission to the official list if ASX becomes aware of information that give grounds to do so.

Waiver applications

During the period of this report, ASX granted 111 waivers and declined the following 22 waivers.

ASX listing rule	Reasons for declining waiver
4.2A, 4.2B, 4.3A, 4.3B, 4.5.1 and 4.7.1 13 separate waivers	The entities securities were suspended from quotation. Pursuant to listing rule 17.5, if an entity fails to give ASX the documents required under these listing rules, ASX will suspend securities from quotation. As quotation of the entities securities will remain suspended on the various reporting due dates, the entities would not be practically disadvantaged by the waivers not being granted. The waivers were not granted.
7.3.4 6 separate waivers	<p>In the first case, the entity proposed to seek shareholder approval at its general meeting for the proposed issue of shares to be issued on conversion of notes issued to the noteholder. The terms of the notes permit conversion to occur up to eight months following the date of the shareholder meeting. Guidance Note 21 provides that where conversion rights are only exercisable with shareholder approval ASX will only be minded to consider a waiver to issue the underlying securities outside the 3 month time period prescribed by listing rule 7.3.4 in circumstances where there is 'a clear and compelling commercial reason for the delay in issue to be made at a later date'. In this case there was no clear and compelling reason for the delay in the proposed issue. The waiver was not granted.</p> <p>In the second case, the entity intended to seek shareholder approval at its general meeting for the proposed issue of securities to another party by no later than 30 months after the date of the meeting. Whilst there was certainty as to potential dilution, there was no clear and compelling commercial reasons for the issue of the securities to be structured in this manner (there was no direct link between the services to be provided and the relevant milestones). The waiver was not granted.</p> <p>In the third case the entity intended to seek shareholder approval at its annual general meeting for a proposed issue of shares in satisfaction of its obligations pursuant to a loan facility to pay interest, fees and (in some circumstances) the principal repayment amount to certain lenders by no later than the maturity date which would be 4 months from the date of the meeting. The waiver was not granted on the basis that the timing of the issue was not necessary or justified by the terms of a specific commercial transaction and maximum dilution to shareholders is not known (the number of shares to be issued was tied to an exchange rate) and there is no cap on the number of shares to be issued.</p> <p>In the fourth case, the entity intended to seek shareholder approval at its annual general meeting for a proposed issue of shares in connection with an acquisition. It sought a pre-emptive waiver in case there were possible delays in satisfying the conditions precedent to complete the acquisition. The waiver was not granted on the basis it was inappropriate to grant a waiver pre-emptively.</p> <p>In the fifth case, the entity proposed to seek shareholder approval for shares to be issued to another company, in the event that company underwrites future capital raisings. The entity's draft notice of meeting contained details about the general framework under which the company may underwrite future capital raising, but no specific capital raising was contemplated. Without the details of a specific capital raising transaction, shareholders were provided with inadequate information. The waiver was not granted.</p>

	In the sixth case, the entity intended to seek shareholder approval at its general meeting for the proposed issue of ordinary shares and options to a vendor on the exercise of an option to acquire a mining project, up to 13 months after the date of the agreement pursuant to which the entity was granted the option. The waiver was not granted on the basis that there was no clear and compelling reason for the timing of the issue up to 13 months after the agreement was entered into.
7.2 exception 3	The entity requested a waiver to extend the 3 month timeframe permitted under Listing Rule 7.2 (exception 3) to place the shortfall under the entitlement offer on the basis that the Covid-19 pandemic had generated unprecedented volatility in the global financial markets. The entitlement offer was announced in 2019, many months before the Covid-19 pandemic had an impact upon financial markets. The entity had sufficient time to complete the offer. There was insufficient evidence of a nexus between the reasons for granting the waiver and the basis of delaying the placement of the shortfall under the entitlement offer. The waiver was not granted.
9.1(b)	<p>The entity sought a waiver to apply the restrictions in Appendix 9B on a 'look through relief' basis (including cash formula relief) to the consideration shares issued to the vendors in connection with the entity's re-compliance transaction, such that the vendor shareholders would be classified as seed capitalists for the purposes of Appendix 9B. ASX will apply escrow restrictions on a 'look through' basis where there is a scrip-for-scrip acquisition of an unlisted entity that holds classified assets by a listed or to-be listed entity, and the unlisted entity that is acquired by the to-be listed entity does not return capital, distribute any assets or make any unusual distributions to its shareholders before the acquisition becomes effective. Look through relief only applies where the seed capitalists paid cash for their securities in the underlying entity and only one level of look through relief will be granted.</p> <p>The vendor shareholders acquired their shareholdings as a result of the conversion of convertible notes which had been issued by a third company (being the majority shareholder of the vendor entity) into shares in the vendor entity. The structure of the transaction is such that the grant of the waiver would require ASX to provide two levels of 'look through relief' which is contrary to section 10.6 of Guidance Note 11. The waiver was not granted.</p>
14.7	The entity sought a waiver to complete a placement that had been approved by shareholders under listing rule 7.1 outside the 3 month period to issue the securities. For waivers of Listing Rule 14.7 (as it relates to Listing Rule 7.3.4) to be granted, the delays typically have to be outside of the control of the company (for example due to regulatory approval). That was not the case and the waiver was not granted.

Enforcement letters

During the period of this report, ASX issued the following enforcement letters.

Type of enforcement letter	No. of letters
Price query ⁴	163
Aware ⁵	36
Show cause ⁶	0
ASIC referral ⁷	5

Listed@ASX Compliance Updates

Listed@ASX Compliance Updates are free email alerts sent to listed entities to advise of market developments, including proposed changes to ASX Listing Rules and Guidance Notes, and to provide guidance on topical or emerging compliance issues. You can subscribe to and view *Listed@ASX Compliance Updates* [here](#) or download the free Listed@ASX app from the [Apple app](#) store and [Google Play](#).

During the period of this report, ASX published the following *Listed@ASX Compliance Updates*.

Update	Summary
07/20	Published on 13 July 2020 covering: <ul style="list-style-type: none">• The extension to ASX's temporary emergency capital raising relief; and• Updates to the Appendix 4C, 4G and 5B forms.
08/20	Published on 7 August 2020 covering: <ul style="list-style-type: none">• The extended reporting and lodgement deadlines for entities affected by COVID-19;• Decisions not to pay or to cancel dividends and other distributions;• Updates to the Appendix 3A.1 online notification of dividend/distribution forms;• Lodgement of draft notices of meeting with ASX following ASIC's extensions to the deadline for holding AGMs;• Information about ASIC's new processes for relief applications and lodgement of other documents; and• The recently released CHES replacement fact sheet and update.
09/20	Published on 15 September 2020 covering:

⁴ ASX will generally issue a 'price query letter' when it detects abnormal trading in an entity's securities and, in its discussion with the entity about the matter, the entity tells ASX that it is not aware of any information which has not been announced to the market and which could explain the abnormal trading. For further information about price query letters, see section 8.3 of Guidance Note 8 *Continuous Disclosure: Listing Rules 3.1 – 3.1B*.

⁵ ASX will typically issue an 'aware letter' to the entity when it has concerns about whether an entity has disclosed market sensitive information at the time it should have under listing rule 3.1. The letter will ask when the entity became aware of the information in question and test when it should have been disclosed under the listing rule 3.1. For further information about aware letters, see section 8.4 of Guidance Note 8 *Continuous Disclosure: Listing Rules 3.1 – 3.1B*.

⁶ A 'show cause letter' is a letter initiating a process to terminate an entity's admission to the official list under listing rule 17.12. It will outline the reasons why ASX is proposing to terminate the entity's admission to the official list and ask it to 'show cause' why it should not be removed from the official list.

⁷ If ASX suspects that an entity has committed a significant contravention of the listings rules, or that a listed entity or any other person (such as a director, secretary or other officer of a listed entity) has committed a significant contravention of the Corporations Act, it is required to give notice under sections 792B(2)(c) / 821B(2)(c) to ASIC with details of the contravention. The purpose of the notice is so that ASIC can then consider what enforcement action, if any, it may wish to take in relation to the suspected contravention.

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| | <ul style="list-style-type: none">• The changes to ASX's temporary emergency capital raising relief;• Confirmation that issues of securities made under ASX's listing rule 7.1 class waiver cannot be ratified;• Updates to Listing Rules Guidance Notes 3, 4, 12 and 19; and• A reminder that draft notices of meetings provided to ASX for review must be consistent with the amendments made to the listing rules made on 1 December 2019. |
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