

# **Listing and Waiver Applications Declined by ASX**

**1 April 2017 – 30 June 2017**



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## Background

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.<sup>1</sup>

## Listing applications declined over the period

The table below summarises for the period of this report:<sup>2</sup>

- applications for admission to the official list that ASX has declined;
- requests to approve a notice of meeting containing a resolution of security holders approving a backdoor listing transaction which ASX has declined on the basis that ASX is likely to reject the entity's application for readmission to the official list in due course; and
- requests for preliminary advice on the suitability of an entity for listing where ASX has indicated that the entity is not suitable for listing.

Entity	Reasons
Entity A	Entity A proposed a back door listing transaction involving the acquisition of a private company whose key asset was a portfolio of intellectual property rights which Entity A considered were being infringed by a number of existing third party products. ASX declined to approve Entity A's notice of meeting seeking shareholder approval to the transaction on the basis ASX would be likely to reject its application for readmission to the official list in due course. ASX had concerns that the company being acquired had not commercialised or earned any revenue from the intellectual property rights and also with certain aspects of the licensing arrangements governing those rights. In addition, ASX

<sup>1</sup> This information is published by ASX in performance of its obligations under the Corporations Act 2001 (Cth) 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>.

<sup>2</sup> This publication 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.

	was concerned whether Entity A was raising sufficient funds to support its proposed business model for deriving income from the intellectual property rights.
Entity B	Entity B approached ASX for in-principle advice on the acceptability of its structure and operations for a listed entity. Entity B carried on business in an emerging market developing and operating e-commerce platforms. The businesses were loss making. ASX advised that it was not satisfied that Entity B's structure and operations were appropriate for a listed entity. In particular, ASX was concerned with Entity B's financial condition and that a foreign regulatory agency had reprimanded Entity B's controlling shareholder and two of its former directors for misconduct.
Entity C	Entity C proposed a back door listing transaction involving the acquisition of a private company developing a technology application. Entity C approached ASX for in-principle advice on the acceptability of its proposed structure and operations. ASX advised that it was not satisfied that Entity C's proposed new structure and operations would be appropriate for a listed entity. ASX was concerned with the early stage of development of the private company's technology application, including its lack of any significant operating history and that it had not generated any revenue from its business to date. ASX was also concerned about the value of the securities proposed to be issued to the vendors of the private company, compared to the proposed minimum subscription amount, and the fact that none of Entity C's proposed directors or senior executives after the transaction had been consummated would have any experience managing or directing a company in the technology sector.
Entity D	Entity D, an entity with distribution operations in an emerging market, approached ASX for in-principle advice on the acceptability of its structure and operations for a listed entity. ASX advised that it was not satisfied that Entity D's structure and operations were appropriate for a listed entity. ASX was concerned that Entity D would have an executive chairman who held 80% of the issued shares and who had no experience managing or directing an ASX listed entity and that only one of its four other proposed directors had any experience managing or directing an ASX listed entity. ASX was also concerned about the relatively small amount of capital Entity D was proposing to raise, relative to its existing annual revenue, calling into question its reasons for listing on ASX.
Entity E	Entity E, an entity with its main assets located in an emerging market, approached ASX for in-principle advice on the acceptability of its structure and operations for a listed entity. ASX advised that it was not satisfied that Entity E's structure and operations were appropriate for a listed entity. ASX was concerned with Entity E's calculation of its free float and whether it would satisfy the 20% minimum free float requirement if it only raised its proposed minimum subscription. ASX was also concerned that none of Entity E's directors had any experience managing or directing an ASX listed entity and by its use of a legal adviser who appeared to have no experience in ASX IPOs or preparing prospectuses.

### Waiver applications declined over the period

ASX Listing Rule	Reasons for declining waiver
Listing Rule 4.2B	The entity was required under listing rule 4.2B to lodge its statutory half year report with ASX for the half year period ending 31 December 2016 by 16 March 2017. Towards the end of 2016 the entity was placed into administration and it was excused from its Corporations Act requirements to lodge a half year report for

	<p>6 months from the date it went into administration under ASIC Class Order 2015/251. The entity forgot to request an equivalent waiver of listing rule 4.2B from ASX and applied for one retrospectively, after it had already contravened listing rule 4.2B. The waiver was declined on the basis that ASX cannot grant a retrospective waiver.</p>
<p>Listing Rule 9.7</p>	<p>At the time of its admission to the ASX official list, the entity had granted options to a related party and vendor of a classified asset as reimbursement for costs incurred by the related party on the entity's behalf in connection with its listing. The options were subject to escrow under listing rule 9.7 and Appendix 9B. After admission, the entity requested a waiver of listing rule 9.7 to remove the escrow requirements from the options or, alternatively, to apply cash formula relief to the options to allow some of them to be freed from escrow. There was no proper basis made out for ASX to grant a complete waiver of the escrow requirements in listing rule 9.7. Also, cash formula relief generally only applies where a holder has paid actual cash for the securities issued. In accordance with item 12 of ASX Guidance Note 11, cash formula relief is extended to free options issued in an IPO to subscribers who pay for their shares. In this case, however, the options were not connected to the initial subscription for shares in the IPO and no cash was paid by the related party to acquire them. Accordingly, the waiver was declined for being inconsistent with the Listing Rules and ASX's published policy.</p>
<p>Listing Rule 10.1 – 2 separate waivers</p>	<p>In the first case, the entity proposed to effect a back door listing of a target company via a scheme of arrangement to acquire all of its ordinary shares. Related parties of the entity held approximately 60% of the target's ordinary shares. The value of the shares being acquired from the related parties exceeded 5% of the entity's equity interests and therefore the entity was required to seek approval from its shareholders under listing rule 10.1 to the acquisition of the target shares from its related parties. The entity was proposing to convene a meeting of the entity's shareholders to approve the back door listing transaction under a listing rule 11.1.2 resolution. Shareholders would also receive a detailed explanatory booklet in relation to the scheme. However, the entity did not want to go to the trouble and expense of providing the independent expert's report required under Listing Rule 10.10.2 opining on whether the acquisition of the shares held by the related parties was fair and reasonable to the entity's shareholders, other than the related party vendors and their associates. It sought a waiver from this requirement. The waiver was refused as being inconsistent with the policy behind listing rule 10.10.2.</p> <p>In the second case, a listed trust was undertaking a 'merger of equals' with another trust, with the acquiring entity proposing to acquire all of the target trust's units from its unitholders. A related party of the acquiring entity had holdings in the acquiring entity and the target of 2.1% and 19.9% respectively. Based on the value of the parcel of units in the target held by the related party, that holding was a "substantial asset" under listing rule 10.2 and therefore the acquiring entity was required to seek unit holder approval to the acquisition of that parcel from the related party under listing rule 10.1. The acquiring entity sought a waiver from that requirement. Given the greater proportionate interest of the related party in the target compared to the acquiring entity, it was not clear to ASX that there was no potential to shift value to the related party via the merger. Accordingly, the waiver was declined.</p>

<p>Listing Rule 10.11 – 2 separate waivers</p>	<p>In the first case, the entity’s initial public offering prospectus outlined a proposal to grant all shareholders one free loyalty option for every three shares held at the record date. The IPO prospectus also stated a related party was entitled to be granted one additional option on the same terms as the loyalty options for every three shares held at the record date. The entity requested a waiver from the requirement in listing rule 10.11 that the issue of the additional options to the related party be approved by shareholders. The entity’s IPO prospectus did not contain disclosure equivalent to that required in a notice of meeting approving such an issue under listing rule 10.13. In particular, the maximum number of options to be issued to the related party and the dilution that other shareholders would suffer was not detailed. Further, the IPO prospectus did not foreshadow that the entity would seek a waiver from listing rule 10.11. Consequently, there could be an expectation that shareholders would have the opportunity to vote on the issue of additional options to the related party. The waiver was therefore declined.</p> <p>In the second case, the entity had applied for admission to the official list of ASX and sought a waiver to permit it to issue a fixed number of ordinary shares and options to a director approximately 12 months after admission to the official list of ASX, based solely on the director’s continued employment with the entity. The IPO prospectus did not foreshadow that the entity would seek a waiver from listing rule 10.11. Consequently, again there could be an expectation that shareholders would have the opportunity to vote on the issue of additional shares and options to the related party. The waiver was therefore declined.</p>
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