

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

**1 April 2018 – 30 June 2018**



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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 in-principle 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 carried on a business of producing traditional medicines in an emerging market. It sought and received in-principle advice in March 2017 as to its acceptability for admission as an ASX listing and lodged an application for admission to the official list in October 2017. ASX confirmed Entity A's conditional admission to the official list by letter in January 2018 but stated that if the relevant conditions were not satisfied by April 2018, the admission resolutions would cease to have effect. In April 2018, Entity A notified ASX that it had not been able to raise its minimum subscription under the prospectus and requested an extension to the date to satisfy the admission conditions. Given the time that had elapsed since the original in-principle approval and the lack of subscriptions to

<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.

	the offer, ASX declined to grant the extension and refused the listing application pursuant to listing rule 1.19.
Entity B	Entity B approached ASX for in-principle advice on the acceptability of its structure and operations for a listed entity. ASX advised Entity B that there was a significant likelihood that it would not be considered suitable for admission to the official list. ASX was concerned about aspects of Entity B's business model, which had the hallmarks of pyramid selling, and the fact that another securities exchange had previously rejected an application by Entity B to join its official list due to concerns about misleading marketing of (now discontinued) products.
Entity C	Entity C sought in-principle advice on its suitability for listing if it pursued a back door listing transaction involving an agreement with a foreign entity to conduct a type of lottery betting in Australia. ASX advised Entity C that there was a significant likelihood that it would not be considered suitable for admission to the official list in light of the Federal Government's stated intention to proceed with legislation banning that type of lottery betting.
Entity D	Entity D sought in-principle advice on its suitability for listing if it pursued a back door listing transaction involving the acquisition of an entity which held a participating interest in an oil and gas project operating in an emerging market. ASX advised Entity D there was a significant likelihood it would fail to meet ASX's requirements for admission were it to proceed with its application. ASX was concerned about the existing involvement of a board member and other closely related parties in the target company and the conflicts of interest that presented; the additional conflicts of interest arising from a professional adviser's role as an adviser to Entity D and as a proposed director; an emphasis of matter included in the target entity's financial statements about a deficiency of shareholders' funds; and the location of the project in an emerging market.
Entity E	Entity E carries on a pharmaceutical manufacturing business in an emerging market. It Entity E originally applied for admission to the official list of ASX in July 2017 and received in-principle approval about its suitability for listing. It subsequently lodged a number of refresh prospectuses extending its offer. In April 2018 Entity E advised ASX that it had raised its subscriptions. ASX was concerned about a number of unusual features in the indicative shareholder register. Given these issues ASX was unable to satisfy itself that spread had been obtained without using artificial means. ASX advised that given the length of time since its original suitability review and the issues subsequently with spread, its suitability would need to be reconsidered. Following that reconsideration, Entity E was advised that if it lodged a fresh application to list on ASX, ASX would most likely exercise its discretion to reject the application.
Entity F	Entity F carries on a business of researching, developing and commercialising therapeutic products in an emerging market. It originally applied for admission to the official list of ASX in April 2017 and received in-principle approval about its suitability for listing. Entity F failed to raise its minimum subscription under its prospectus and proposed to reapply for admission. ASX advised that given the length of time since its original suitability review and given the period of time the offer was open to raise minimum subscriptions, its suitability would need to be reconsidered. Entity F re-sought in-principle advice on its suitability for listing on ASX. Following that reconsideration, Entity F was advised that if it lodged a fresh application to list, ASX would most likely exercise its discretion to reject the application.

## Waiver applications declined over the period

ASX Listing Rule	Reasons for declining waiver
Listing rule 1.1 Condition 8	The entity, which had previously been removed from the official list of ASX, subsequently applied for re-admission to the official list following completion of a reverse takeover. The entity applied for a waiver from listing rule 1.1 condition 8 on the assumption that ASX would not count existing shareholders to demonstrate satisfaction of the shareholder spread as required by the rule. Listing rule 1.1 condition 7, being the equivalent listing rule prior to the listing rule amendments in December 2016, excluded existing shareholders at the time of removal from being counted for spread purposes. The rule was amended in December 2016 to delete this exclusion. The waiver was declined as being unnecessary in light of the rule change.
Listing Rule 1.1 Condition 12	The entity had entered into a binding merger implementation agreement with another entity to acquire the assets and undertaking of the other entity by way of a merger. The merger resulted in the entity having to re-comply with chapters 1 and 2 of the Listing Rules. In conjunction with the merger the entity proposed to complete a capital raising of between \$4 million and \$5 million at a share price of at least \$0.20. The entity also proposed to grant options to various parties with an exercise price of \$0.01, contrary to the admission condition that the minimum exercise price for options on issue is \$0.20. The waiver was refused for being inconsistent with the policy underpinning the listing rule.
Listing Rule 3.13.3	The entity is a foreign entity and has its primary listing on an overseas securities exchange. The entity sought a waiver from the requirement to provide ASX with a copy of the contents of any prepared announcement, including any prepared address by the chairperson, to be delivered at a meeting of security holders no later than the start of the meeting. The waiver was refused for being inconsistent with the policy underpinning the listing rule.
Listing Rule 3.16.4	The entity is a foreign entity and has its primary listing on an overseas securities exchange. The entity sought a waiver from the requirement to tell ASX the material terms of any employment, service or consultancy agreement the entity or a related entity entered into with its chief executive officer (or equivalent) or any of the chief executive officer's related parties, any of the entity's directors or related parties of the entity's directors and of any material variation to such an agreement. The waiver was refused for being inconsistent with the policy underpinning the listing rule.
Listing Rule 6.23.3	The entity sought a waiver to enable it to cancel existing performance rights held by an executive director and replace them with new performance rights on varied terms, including the removal of some milestones. The waiver was refused for being inconsistent with the policy underpinning the listing rule.

Listing Rule 7.3.2	The entity proposed to issue ordinary shares in stages to a third party for exploration services. The share issues were to occur later than 3 months from the date of shareholder approval. Although the number of securities to be issued was fixed and the degree of dilution was known, the milestones for the share issues to occur were not clearly defined, so shareholders were not able to give informed consent to the issue. The waiver was declined for being inconsistent with the policy underpinning the listing rule.
Listing Rule 9.1.3	The entity requested a waiver from having to prepare and obtain signed escrow agreements from 3 unrelated security holders on the basis of the administrative burden involved. This was not considered to give rise to an undue administrative burden and accordingly the waiver was not granted.
Listing Rule 10.1	The entity proposed to acquire 100% of the ordinary shares in a target company by way of an off-market takeover bid. Three related parties of the entity also held ordinary shares in the target company. Based on the value of the ordinary shares in the target company, the holdings were a "substantial asset" under listing rule 10.2 and therefore the entity was required to seek shareholder approval to acquire the parcels of ordinary shares from the related parties under listing rule 10.1. The entity sought a waiver from that requirement. Given the greater proportionate interest of the related parties in the target company compared to the entity, it was not clear to ASX that there was no potential to shift value to the related parties via the off-market takeover. Accordingly, the waiver was declined.
Listing Rule 10.10.2	The entity requested a waiver from Listing Rule 10.10.2 to permit it not to include the independent expert's report ordinarily required in the notice of meeting seeking shareholder approval under listing rule 10.1. The reasons given for seeking the waiver included the time and expense involved. The waiver was refused for being inconsistent with the policy behind listing rule 10.10.2.
Listing Rule 11.4	The entity intended to dispose of a major asset to another company that proposed to seek a dual listing on ASX and an overseas securities exchange. The entity sought a waiver to dispose of the major asset without shareholder approval. The waiver was refused for being inconsistent with the policy behind listing rule 11.4. AX considered the asset disposal was a sufficiently significant matter for security holders to be consulted.
Listing Rule 14.7	The entity received shareholder approval under listing rule 7.1 to issue a fixed number of shares, with the cash proceeds to be used as consideration for the acquisition of another business or company. As outlined in the entity's notice of meeting and as required by listing rule 7.3.2, the shares were required to be issued no later than three months after the date of the meeting (or such later date that ASX in its discretion decides). The entity was unable to complete the acquisition of another business or company within three months following the general meeting and requested a waiver to issue the securities later than three months after the date of the meeting. The reasons to justify issuing the shares without further shareholder approval were not considered sufficiently compelling to justify departing from the principle of listing rules 7.3.2 and 14.7. Accordingly, the waiver was not granted.

Listing Rule 15.13	The entity is a foreign incorporated entity and its articles of association did not contain the relevant provisions in listing rule 15.13 regarding the sale of small holdings. The entity sought a waiver to permit it to divest holdings that are less than a marketable parcel. The waiver was not permitted on the basis the entity's articles of association do not contain the relevant provisions in listing rule 15.13.
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