

Listing and Waiver Applications Declined by ASX

1 January 2018 – 31 March 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.¹

Listing applications declined over the period

The table below summarises for the period of this report:²

- 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 proposed to acquire a 25% interest in a business operating in an emerging market as part of a back door listing transaction. Entity A had originally acquired a 75% interest in the business without notifying ASX under Listing Rule 11.1 and had been suspended as a consequence. Entity A approached ASX for in-principle advice on the acceptability of its structure and operations for a listed entity. ASX advised Entity A that there was a significant likelihood that it would fail to meet Listing Rule 1.1 condition 1 and/or that ASX would exercise its discretion under Listing Rule 1.19 to decline Entity A's application for readmission to the official list. ASX was concerned about the nature and location of the business, the manner in which Entity A had acquired its 75% interest in the business (including its failure to comply with its notification obligations under Listing

¹ 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>.

² 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.

	Rule 11.1) and the limited disclosure Entity A had made about the business since that acquisition.
Entity B	Entity B applied for admission to the official list. It carried on business in an emerging market. ASX exercised its discretion under Listing Rule 1.19 to refuse Entity B's application for admission to the official list upon being advised that the managing director and controller of Entity B's largest shareholder, who would have a post-listing holding of 36% in Entity B, had reported himself to the relevant authorities in relation to alleged unlawful conduct.
Entity C	Entity C applied for admission to the official list. It did not apply to ASX for in-principle advice about suitability for admission to the official list. ASX advised Entity C that there was a significant likelihood that it would be regarded as not suitable for admission to the official list. ASX advised Entity C it held concerns about the nature of the business and some of the jurisdictions where it proposes to carry on that business, the significant funding risk associated with two proposed projects, the lack of experience of Entity C's directors in managing or directing an ASX listed entity and ASX not having had prior dealings with Entity C's legal representatives, auditor and lead manager on listing matters.
Entity D	Entity D carried on a manufacturing business in an emerging market. It approached ASX for in-principle advice on the acceptability of its structure and operations for a listed entity. Entity D's securities were listed on another securities exchange. It proposed to migrate its listing to ASX. 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 absence of any proposed capital raising in conjunction with Entity D's admission (resulting in ASX not being able to satisfy itself that there is sufficient investor interest to justify its listing); the way in which Entity D proposed to satisfy the shareholder spread requirement through a share transfer from the largest shareholder and executive director to the non-executive chairman and subsequent off-market sales to Australian investors; the lack of liquidity and on-market trading in Entity D's shares on the other securities exchange; the fact that its primary operations are located in an emerging market; and the non-executive chairman not being independent and having no experience managing or directing an ASX listed entity.
Entity E	Entity E applied for admission to the official list. It carried on business in an emerging market. ASX exercised its discretion under Listing Rule 1.19 to refuse Entity E's application for admission upon being informed by Entity E's Australian legal adviser that its audit firm had withdrawn its consent to be named as the auditor in Entity E's prospectus due to concerns it had regarding financial information provided by Entity E.
Entity F	Entity F sought in-principle advice on its suitability for admission to the official list of ASX. ASX advised Entity F that there was a significant likelihood it would fail to meet ASX's requirements for admission. ASX held concerns that Entity F's business was at an unacceptably early stage of development and had a very limited operating and financial history. In addition ASX was concerned with Entity F's financial condition, including an emphasis of matter statement contained in the audited financial statements regarding a material uncertainty that may cast significant doubt on Entity F's ability to continue as a going concern.

Waiver applications declined over the period

ASX Listing Rule	Reasons for declining waiver
Listing Rule 6.23	The entity proposed to amend the terms of unquoted options previously granted in connection with a placement of ordinary shares. The amendments to the option terms would potentially result in more shares being issued on exercise. The waiver was refused. There were no sufficiently compelling reasons provided to deny shareholders the right to approve the changes.
Listing Rule 7.3.2 (2 separate waiver applications)	<p>In the first case, the entity sought a waiver to issue shares within 24 months, rather than 3 months, from the date of the shareholder meeting approving the issue, on achievement of certain share price related milestones. The waiver was declined for being inconsistent with the policy underlying Listing Rule 7.3.2.</p> <p>In the second case, the entity proposed to issue ordinary shares in exchange for services. ASX has previously considered granting waivers from Listing Rule 7.3.2 in circumstances where there is a structured or well-articulated work program associated with the arrangement that justified the delayed issue of securities. In this case there was no such work program. ASX was also concerned that the entity was unable to quantify the maximum number of shares that might be issued and that granting the waiver would have extended shareholders' exposure to potential dilution. Consequently the waiver was declined.</p>
Listing Rule 9.7	The entity requested a waiver to permit ASX restricted securities to be transferred from one holder to another. The change of holder would have resulted in a change in the underlying beneficial ownership of the securities. The waiver was refused as being inconsistent with ASX's policy on escrow.
Listing Rule 10.7	Listing Rule 10.7 states that if an acquisition to which Listing Rule 10.1 applies is of a classified asset, the consideration must be restricted securities. ASX has previously granted waivers from Listing Rule 10.7 when the acquiring entity already has a stake in the asset/entity being acquired and the asset/entity has been subject to a continuous disclosure regime. In this case the acquisition included assets that had not been subject to any continuous disclosure regime. Accordingly, the waiver was refused.
Listing Rule 10.13.3	The entity proposed to seek security holder approval at its annual general meeting for three directors to participate in the allocation of the shortfall under a rights issue. It requested a waiver to permit the issue to occur greater than 1 month from the date of the meeting. There was no compelling reason for the waiver to be granted and accordingly it was refused.
Listing Rule 10.13.5	The entity proposed to issue shares to directors using a formula, being a minimum price of at least 80% of the VWAP of shares calculated over the 5 days on which sales in shares were recorded on the ASX before the day on which the issue is made. It was also proposing to issue shares to unrelated parties using the same formula. Listing Rule 10.13.5 requires a fixed issue price for securities being issued to a related party to be included in the notice of meeting seeking approval to the issue so that shareholders can give a fully informed consent. The waiver was refused as being inconsistent with the policy underlying Listing Rule 10.13.5.

<p>Listing Rule 14.7 (5 separate waiver applications)</p>	<p>In the first case, the entity’s shareholders had approved an issue of shares for an asset acquisition. The terms of the acquisition were amended following the meeting and the entity sought a waiver to allow it to issue a different number of shares for the asset acquisition than had been approved by shareholders. The waiver was refused.</p> <p>In the second case, the entity sought a waiver to allow it to issue shares at a time later than 3 months after the date of the entity’s meeting to approve the issue, in conjunction with seeking a listing on another securities exchange. There was no certainty how long it would take the entity to list on the other exchange. The entity had already had a considerable extension of time to permit the issue of securities. The additional request would have been more than 1 year and 4 months after shareholder approval was originally obtained for the issue. It was not considered appropriate to grant the waiver.</p> <p>In the third case, the entity sought a waiver to allow it to issue shares at a time later than 3 months after the date of the entity’s meeting to approve the issue, as part consideration for an acquisition. The entity’s share price had materially dropped since shareholder approval was given for the issue. ASX considered that the delay in negotiating and finalising the terms of the agreement for the acquisition was insufficiently compelling to warrant the granting of the waiver. For waivers to be granted, the delays typically have to be outside of the control of the issuer and relate to matters such as unexpected delays involving government or regulatory approvals.</p> <p>In the fourth case, the entity requested additional time to complete a general placement because it was unable to source the funds within 3 months from the date of the shareholder approval. This was not considered a sufficiently compelling reason to grant a waiver.</p> <p>In the fifth case, the entity proposed to acquire a minimum of 75% of the shares in another company, in consideration for up to approximately 62 million fully paid ordinary shares and 30 million partly paid shares in the entity. The issue of the consideration shares was approved by shareholders at its annual general meeting. A delay occurred in negotiating and finalising the terms of the agreement for the acquisition with the vendor, for which the entity sought a waiver to permit the issue to occur later than 3 months after the date of the entity’s meeting. Again, ASX considered that the delay in negotiating and finalising the terms of the agreement for the acquisition was insufficiently compelling to warrant the granting of the waiver.</p>
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