

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

**1 July 2017 – 30 September 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 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 a back door listing transaction involving the acquisition of a private company whose primary asset was a licence recently granted by the government of an emerging economy to cultivate and supply medical cannabis. It approached ASX for in-principle advice on the acceptability of its structure and operations for a listed entity if the transaction proceeded. ASX advised Entity A that it did not consider the entity's structure and operations would be appropriate for a listed entity. ASX was concerned about the very early stage of development of the entity's business and the absence of any significant operating or financial history.

<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.

Entity B	Entity B applied for admission to the official list. It carried on a processing and manufacturing business in an emerging market through two subsidiaries. Those subsidiaries had previously been in the foreign equivalent of voluntary administration and the entity's most recent accounts had a qualified audit report with a going concern emphasis of matter. ASX suggested that Entity B withdraw its application. ASX had concerns about the financial condition of the entity, combined with aspects of its proposed governance arrangements (including the fact that the chair of the board of directors was not independent).
Entity C	Entity C proposed a back door listing transaction involving the acquisition of a life sciences business via a scheme. It approached ASX for in-principle advice on the acceptability of its structure and operations for a listed entity if the transaction proceeded. ASX advised Entity C that it did not consider the entity's structure and operations would be appropriate for a listed entity. ASX was concerned about the financial condition of the business being acquired, the valuation methodology that had been applied to determine the scheme consideration and certain related party aspects of the proposed acquisition.
Entity D	Entity D conducted a business of manufacturing and selling healthcare products in an emerging market. It approached ASX for in-principle advice on the acceptability of its structure and operations for a listed entity. ASX advised Entity D that it did not have an appropriate structure and operations for a listed entity. ASX was concerned about aspects of its proposed governance arrangements, including the lack of experience of the entity's proposed directors and the absence of independent directors not connected with the major shareholder or its advisers.
Entity E	Entity E, a company involved in the medical cannabis sector, approached ASX for a preliminary view on the acceptability of its structure and operations for a listed entity. ASX advised Entity E that it did not have an appropriate structure and operations for a listed entity. ASX was concerned at the very early stage of the entity's development and its lack of an operating or financial history. ASX was also concerned about the involvement of a particular individual with the entity and whether their involvement was consistent with maintaining the reputation of the ASX market.

### Waiver applications declined over the period

ASX Listing Rule	Reasons for declining waiver
Listing Rule 6.23.4 (2 separate waiver applications)	<p>In the first case, the entity proposed to amend the terms of issue of performance rights previously granted under its employee incentive scheme to allow a reference to earnings per share to be changed so as not to include certain items. The waiver was refused. There were no sufficiently compelling reasons provided to deny shareholders the right to approve the changes.</p> <p>In the second case, the entity had unquoted options granted to executives residing offshore. The entity proposed to amend the option terms to increase the exercise price to allow the executives to take advantage of a tax incentive. The waiver was refused. Again, there were no sufficiently compelling reasons provided to deny shareholders the right to approve the changes.</p>

Listing Rule 7.3.2	<p>The entity entered into a memorandum of understanding with another company to develop a framework regarding the development, manufacture, sale and service of the entity's technology. At the same time the entity entered into a placement agreement with the company pursuant to which the company could elect to subscribe for securities in the entity in 2 stages over a period of up to 12 months. The first stage of the placement was to be made by the entity under its Listing Rule 7.1A capacity. The second stage of the placement was subject to shareholder approval under Listing Rule 7.1, following which the company could elect when it would subscribe. The entity sought a waiver of Listing Rule 7.3.2 to allow the second stage securities to be issued later than 3 months after the date of the meeting to approve the issue. The waiver was refused as being inconsistent with the policy settings in Listing Rule 7.3.2.</p>
Listing Rule 9.7 (2 separate waiver applications)	<p>In the first case, the entity sought a waiver to permit a founder of the entity to transfer ASX restricted securities to a third party to settle a commercial dispute. The waiver was refused as being inconsistent with ASX's policy on escrow.</p> <p>In the second case, the entity requested a waiver to permit ASX restricted securities to be transferred from one superannuation fund to another for financial planning purposes. The change of superannuation funds would have resulted in a change in the underlying beneficial ownership of the securities. The waiver was refused as not being consistent with ASX's policy on escrow.</p>
Listing Rule 10.7	<p>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 a waiver from Listing Rule 10.7 when the acquiring entity already has a stake or interest in the asset/entity being acquired and the asset/entity has been subject to a continuous disclosure regime. In this case the entity proposed to acquire a 100% interest in its joint venture partner. The acquisition included assets that were not part of the joint venture and which had not been subject to any continuous disclosure regime. Accordingly, the waiver was refused.</p>
Listing Rule 10.10.2	<p>The entity sought a waiver to permit it not to include an independent expert's report in the notice of meeting seeking an approval under Listing Rule 10.1. The waiver was refused as being inconsistent with the policy of the rule (namely to give security holders independent and impartial advice on a transaction involving a person in a position of influence to assist in their deliberations on whether or not to approve the transaction under Listing Rule 10.1).</p>
Listing Rule 10.13.3	<p>Listing Rule 10.13.3 requires a placement to a director to take place within one month of the date of shareholder approval to the placement under Listing Rule 10.11. The entity sought a waiver to undertake a placement of ordinary shares to a director at the same time as it made a placement to unrelated parties, which would be no later than 3 months from the date of the shareholders' meeting to approve the placement under listing rule 7.1. There was no compelling reason provided to grant the waiver and therefore it was refused.</p>

<p>Listing Rule 14.7 (3 separate waiver applications)</p>	<p>In the first case, the entity sought a waiver to allow it to issue shares greater than 3 months after the date of the meeting at which the issue was due to be approved by shareholders under Listing Rule 7.1. The number of securities to be issued was unknown at that time as it determined by reference to a percentage of the volume weighted average price of the securities calculated over 5 days near the time of issue. Consequently shareholders would not know the maximum amount of dilution at the time they approved the issue. The waiver was refused.</p> <p>In the second case, the entity sought a waiver to allow it to issue shares greater than 1 month and 3 months respectively after the date of the meeting at which the issues had been approved by shareholders under Listing Rules 7.1 and 10.11. The waiver was refused as the entity's circumstances had materially changed since the time when shareholder approval was granted.</p> <p>In the third case, the entity sought a waiver to allow it to issue shares to a related party up to 2 months after obtaining shareholder approval. There was no compelling reason provided to grant the waiver and therefore it was refused.</p>
<p>Listing Rule 19.12</p>	<p>The entity sought a waiver from the definition of 'marketable parcel' to allow it to implement a compulsory sale scheme under Listing Rule 15.13 for security holders holding a parcel of securities of less than \$1,000 rather than \$500. The waiver would have been prejudicial to the interests of security holders holding more than \$500 but less than \$1,000 of securities and therefore it was refused.</p>