

Listing and Waiver Applications Declined by ASX

1 October 2017 – 31 December 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.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 |
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| Entity A | Entity A carried on a business in an emerging market producing medicinal kava for export. It approached ASX for in-principle advice on the acceptability of its structure and operations for a listed entity. 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 the entity's business operations, its limited operating and financial history and its capacity to execute key components of its business plan. |

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.

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| Entity B | Entity B carried on a manufacturing business in an emerging market and applied for admission to the official list. ASX exercised its discretion under Listing Rule 1.19 to refuse Entity B's application. ASX had regard to the inclusion of an individual who was both a director and the major shareholder of Entity B, and another company associated with him, in a list of dishonest persons and list of dishonest entities respectively published under the judicial system in the country where Entity B carried on business. ASX declined to accept an offer from the major shareholder to resign as a director and not be involved in the entity's management as ASX could not be satisfied that, as major shareholder, he would not be in a position to exercise some level of influence on the board and management of Entity B. |
| Entity C | Entity C proposed a back door listing transaction involving the acquisition of a company that owned 95% of the issued shares in a mining company located in an emerging market. The mining company's sole asset was a mothballed mine. Entity C had substantial short-term secured lending arrangements in place. 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 risks posed by Entity C's substantial short-term lending arrangements, its reliance on forecast revenue from a mothballed mine to repay those debts, and its capacity to meet ASX's working capital requirements for admission. ASX also had concerns about one of Entity C's proposed directors based on a statutory declaration he had provided in connection with the listing of another entity. |
| Entity D | Entity D carried on a real estate development business 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 the limited information provided about the ultimate beneficial owner of a controlling shareholding in Entity D and the fact that, despite his controlling shareholding, he was proposing not to be a director of the entity. In reaching this decision, ASX had regard to previous experiences it has had where controlling shareholders of entities based in emerging markets have not formally taken up board positions in an attempt to avoid ASX's good fame and character checks for directors, as well as previous experiences it has had with property developers based in emerging markets. |
| Entity E | Entity E carried on a manufacturing business in an emerging market. Entity E 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 and, should Entity E apply for admission to the official list, ASX would be likely to exercise its discretion under the Listing Rules to refuse the application. ASX had concerns that Entity E's board lacked any directors with experience directing or managing an ASX listed entity. |
| Entity F | Entity F applied for admission to the official list. It withdrew its application after ASX raised concerns that it would not satisfy the requirements for admission under the assets test. In particular, ASX advised Entity F that statements in its prospectus about the likely need to raise additional capital within 12 months of listing if it only raised its minimum subscription amount was strong evidence of the fact that Entity F would not have sufficient working capital to carry out its stated objectives. ASX questioned the validity of a statement by directors to the contrary in the entity's prospectus and advised Entity F that the statement did not comply with the spirit and intent of the Listing Rules. |

Waiver applications declined over the period

| ASX Listing Rule | Reasons for declining waiver |
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| Listing Rule 1.1 Condition 6 and Listing Rule 2.4 | The entity was incorporated in a foreign jurisdiction and was required to use CHES Depository Interests to facilitate the holding and transfer of its ASX quoted securities. The entity sought a waiver from the obligation in Listing Rule 1.1 Condition 6 and Listing Rule 2.4 to apply for quotation of all of the securities in its main class. The waiver was refused because the entity did not have a primary listing on an overseas exchange and granting the waiver would have been inconsistent with the policy settings in ASX Listing Rules Guidance Note 4 <i>Foreign Entities Listing on ASX</i> . |
| Listing Rule 1.1 Condition 16, 4.7.3, 4.7.4 and 4.10.3 | The entity was incorporated in a foreign jurisdiction and listed on a foreign exchange. The entity sought a waiver from the obligations under Listing Rule 1.1 Condition 16 and Listing Rule 4.10.3 to disclose the extent to which it would follow the recommendations set by the ASX Corporate Governance Council, under Listing Rule 4.7.3 to lodge each year a completed Appendix 4G, and under Listing Rule 4.7.4 to provide each year a corporate governance statement. The waivers were refused as being inconsistent with the policy settings in those rules. |
| Listing Rule 2.8 | The entity sought a waiver to permit it not to apply for quotation of securities within the prescribed timeframe set by Listing Rule 2.8. The waiver was refused as being inconsistent with the policy settings in that rule. |
| Listing Rules 7.1, 10.11 and 10.14 | The entity was incorporated in a foreign jurisdiction and listed on a foreign exchange. The entity sought a waiver to permit it to comply with the rules of the foreign exchange regulating new issues rather than Listing Rules 7.1, 10.11 and 10.14. The waiver was refused because the foreign exchange's rules regulated new issuances in a significantly different way to Listing Rules 7.1, 10.11 and 10.14, and was inconsistent with the policy setting in Guidance Note 4 <i>Foreign Entities Listing on ASX</i> , which limits the situations where ASX will grant such waivers to where the rules of the foreign exchange are broadly comparable to ASX's Listing Rules. |
| Listing Rule 7.3.2 (2 related waiver applications) | <p>The entity requested a waiver to permit it to seek approval under Listing Rule 7.1 to issue securities up to 6 months after the date of the meeting to approve the issue, to acquire an additional mining tenement. No information was provided to shareholders in relation to the additional mining tenement, other than it was within a 100km radius of an existing project owned by the entity.</p> <p>The same entity also requested a waiver from Listing Rule 7.1 to issue securities up to 5 years after the date of the meeting to approve the issue, upon the achievement of certain JORC milestones in relation to a mining tenement the entity had acquired, and any additional mining tenements it might acquire within a 100km radius of the acquired mining tenement.</p> <p>The waivers were refused. In ASX's view, shareholders were not provided with sufficient information in relation to the additional, unidentified, mining tenements to give a meaningful approval.</p> |

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| 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 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. |
| Listing Rule 10.11 and 10.14 | The entity had recently listed on an overseas securities exchange. The entity sought a waiver to permit it to comply with the rules of the foreign exchange regulating new issues to related parties, rather than Listing Rules 10.11 and 10.14. The waiver was refused because the foreign exchange's rules regulated issuances to related parties in a significantly different way to Listing Rules 10.11 and 10.14, and was inconsistent with the policy setting in Guidance Note 4 <i>Foreign Entities Listing on ASX</i> , which limits the situations where ASX will grant such waivers to where the rules of the foreign exchange are broadly comparable to ASX's Listing Rules. |
| Listing Rule 14.7 (2 separate waiver applications) | <p>In the first case, the entity sought a waiver to allow it to issue shares to a related party greater than 1 month after the date of the meeting at which the issue was approved by shareholders under Listing Rule 10.11. The waiver was requested to delay the issue for US tax purposes for the benefit of the related party. The waiver was refused.</p> <p>In the second case, at the entity's AGM, shareholders approved the entity granting up to 100 million options exercisable at 4 cents on or before 1 December 2021. Following the AGM the entity sought a waiver to permit it to grant options with a higher exercise price and a shorter exercise period than had been approved by shareholders at the AGM. The waiver was not granted. Even though the proposed alterations to the terms of the options could be considered advantageous to shareholders, ASX considered it appropriate that the entity's shareholders should approve the altered terms.</p> |
| Listing Rule 15.16(b) | The entity sought shareholder approval to terminate an existing investment management agreement and to enter into a new investment management agreement with another manager. The initial term of the new investment management agreement would be 10 years, subject to the grant of a waiver from Listing Rule 15.16(b). Guidance Note 26 <i>Management Agreements</i> contemplates the grant of a waiver from Listing Rule 15.16(b) provided the entity's shareholders approve the management agreement, all material information about the management agreement has been included in the notice of meeting of security holders and the manager and its associates have been the subject of a voting exclusion statement. Guidance Note 26 states that the information disclosed about the proposed management agreement should include reasonably prominent disclosure that the term of the agreement is longer than the 5 years permitted under Listing Rule 15.16 and give clear and cogent reasons why the entity considers the longer term is necessary. In this case, the entity's notice of meeting was finalised prior to the request for the waiver and did not set out clear and cogent reasons to justify the longer term. Accordingly the waiver was declined. |