

Listing and Waiver Applications Declined by ASX

1 October 2018 – 31 December 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 sought in-principle approval about its suitability for listing on ASX. It intended to open clinics focussing on pain management using cannabinoid medication. ASX advised that there was a significant likelihood at this time that it would not be regarded as suitable for admission to the official list due the very early stage of its proposed business operations and the fact that it had no operating history.

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.

Entity B	Entity B sought in-principle approval about its suitability for re-admission following a proposed backdoor listing transaction involving the acquisition of a partial interest in an African company with a mining processing facility on care and maintenance and a 100% interest in various exploration tenements also in Africa. ASX advised Entity B of the significant likelihood it would fail to meet ASX listing requirements because the African company did not yet have the licence required to operate the processing facility, it had no supply or off take agreements in place, and there were serious deficiencies in the accounts of the African company being acquired.
Entity C	Entity C carries on a property development business. It applied for admission to the official list in 2017. ASX had various issues with its application over an extended period, including with the veracity of financial forecasts included in its prospectus, and exercised its discretion to reject the application in early 2018. Entity C made submissions to rectify the issues that ASX had raised and ASX subsequently confirmed that it would reconsider the listing application provided certain conditions were satisfied. Entity C's prospectus was about to expire without it having raised its minimum subscription and it was proposing to launch a new prospectus. ASX advised the entity that it would not consider a new prospectus.
Entity D	Entity D sought in-principle approval about its suitability for re-admission following a proposed backdoor listing transaction involving the acquisition of a newly established entity intending to design and construct a milk processing facility. Entity D was advised of the significant likelihood it would fail to meet ASX listing requirements because of the limited operating and financial history of the entity being acquired, the very early stage of its proposed operations, and a qualification in its most recent accounts highlighting that its ability to continue as a going concern was dependent on various governmental consents which had yet to be obtained.
Entity E	Entity E is a recently incorporated company intending to acquire a business manufacturing and selling nutraceutical and well-being products based in an emerging market. Entity E sought in-principle approval about its suitability for listing on ASX. ASX advised the company of the significant likelihood it would fail to meet ASX listing requirements because of the nature and location of its proposed business, the lack of relevant experience of its board of directors and the fact that it uses a "network marketing" (pyramid selling) business model.
Entity F	Entity F withdrew its application for admission to the official list after ASX raised concerns that a substantial portion of the funds raised in its IPO were proposed to be used to pay cash to the vendors of several mining exploration tenements. The entity claimed that the vendors were neither related parties nor promoters (if an applicant for listing has acquired a mining exploration tenement from a related party or promoter in the 2 years before its application for listing, under the listing rules, the consideration for the acquisition is required to be scrip and subject to escrow for 2 years after listing). ASX was not satisfied that the vendors were not promoters and was also concerned about a negative newspaper article about the promoter of the company alleging that he had been involved in litigation alleging certain companies of which he was a director were making inappropriate payments for his benefit.

Entity G	Entity G sought in-principle approval about its suitability for listing on ASX. Entity G manufactured rolled steel strips in an emerging market and distributed the products to clients in the emerging market. ASX advised Entity G of the significant likelihood it would fail to meet ASX listing requirements. ASX had concerns about the jurisdiction where the main business is carried on, the proposed constitution of the board and, in relation to one of its directors, prior unacceptable experiences ASX had with companies operating in the same jurisdiction where he had been a director of those companies. ASX also had concerns in relation to the balance of the board about their relative lack of experience in managing or directing listed entities and the concentration of shareholdings post-listing held by four of the five existing shareholders in Entity G.
Entity H	Entity H sought in-principle approval about its suitability for listing on ASX. Its business is research into and the cultivation of aquatic plants. ASX advised Entity H of the significant likelihood it would fail to meet ASX listing requirements because of the very early stage of its business operations; its limited operating history; and that it still had to develop or obtain the intellectual property to define and commercialise its products.
Entity I	Entity I sought in-principle approval about its suitability for listing on ASX. Entity I's business activity is providing construction services. ASX advised Entity I of the significant likelihood it would fail to meet ASX listing requirements because of the significant reliance on related party contracts.
Entity J	Entity J sought in-principle approval about its suitability for listing on ASX. Entity J carries on the business of fund management and fund administration services. ASX advised Entity J of the significant likelihood it would fail to meet ASX listing requirements because of Entity J's limited operating history and level of operations. The historical revenues had been largely generated from related parties.

Waiver applications declined over the period

ASX Listing Rule	Reasons for declining waiver
Listing rule 6.23.3 – two separate waivers	<p>The entity sought a waiver from listing rule 6.23.3 to enable it to amend the terms of performance rights issued to directors, some key employees and consultants to permit the increase in the expiry period of the performance rights for a period of 6 months. The entity was granted a waiver of listing rule 6.23.3 earlier in 2018 when the terms of the performance rights were amended to extend the original vesting period from 30 June 2018 to 31 December 2018. Since the grant of the waiver, the entity had done nothing to advance the project contemplated by the performance rights.</p> <p>In the second case the entity sought a waiver from listing rule 6.23.3 to enable it to amend the terms of options granted to the CEO by varying the vesting conditions. The proposed amendment would extend the period of exercise of the CEO options, and therefore listing rule 6.23.3 applied. The nature of the variation was significant.</p> <p>In both cases, the waiver was refused for being inconsistent with the policy underpinning the listing rule.</p>

<p>Listing Rule 7.33</p>	<p>The entity sought a waiver from listing rule 7.33 to permit it to buy back shares on-market in excess of 5% of the volume weighted average market price over the last 5 days on which sales in the entity's shares were recorded.</p> <p>Listing rule 7.33 restricts an entity from buying back shares under an on-market buy-back to a price which is not more than 5% above the volume weighted average market price for securities in that class, calculated over the last 5 days on which sales in the shares were recorded before the day on which the purchase under the buy-back was made. This ensures that the buy-back price does not depart significantly from the market price.</p> <p>No compelling reasons were provided for granting the waiver, so it was refused for being inconsistent with the policy underpinning the listing rule.</p>
<p>Listing Rule 10.11</p>	<p>The entity sought a waiver from listing rule 10.11 to issue securities to a director, pursuant to an employment contract, without shareholder approval.</p> <p>The entity is a foreign entity also listed on a foreign securities exchange. Applications for waivers from listing rules by foreign entities on the basis of compliance with the rule of a foreign securities exchange are unlikely to be successful where the other exchange deals with the specific issue in a significantly different way to ASX. In this particular case the other exchange's rules contain significantly different provisions for regulating issues of securities to related parties that are not considered to be comparable in substance to the obligations under listing rule 10.11. In addition the maximum number of securities to be issued was not known and therefore the potential dilution of security holders could not be determined. The waiver was refused.</p>
<p>Listing Rule 10.13.3</p>	<p>The entity proposed to issue milestone shares to a related party, based on certain performance milestones expressed to be "opportunities" being commenced. In order to meet the requirements of listing rule 6.1, the performance milestone attached to the milestone shares must be appropriate and equitable, including an appropriate link between the performance milestone and the transaction or purpose for which the performance shares are to be issued.</p> <p>In this instance, the link between the proposed milestones and the value they would bring to the entity was vague and had insufficient associated objective numerical value and regularity, with the entity's shareholders being unprotected from the issue of milestone shares to the related party. The waiver was declined.</p>
<p>Listing Rule 10.14</p>	<p>In May 2018 the entity sent an offer letter to 3 directors offering performance rights under the entity's performance rights plan, subject to shareholder approval at the next AGM, in recognition of their contribution to the entity. Subsequent to and independent of the offer letters being sent, the entity commenced discussions with another company regarding a proposal to merge via a scheme of arrangement. Under the terms of the plan the performance rights would vest automatically when a court approves a merger by way of a scheme of arrangement. The entity did not seek shareholder approval for the proposed offer of the performance rights. The entity sought a waiver to grant the performance rights to the three directors, without seeking shareholder approval. The waiver was not granted.</p>

<p>Listing Rule 14.7 – four separate waivers</p>	<p>In the first case, the entity received shareholder approval under listing rule 10.11 to issue a fixed number of convertible notes to a related party, no later than one month after the date of the meeting. The entity requested a waiver for an extension to be allowed to issue the convertible notes within three months following its annual general meeting. The entity did not provide evidence of a genuine delay, with the two reasons given (the impending holiday period and the suspension of the entity's securities) known to the entity when it settled the draft of its notice of meeting and sent it to shareholders. Typically for waivers to be granted the delay has to be outside of the control of the entity and relate to matters such as unexpected delays involving government or regulatory approvals. The waiver was not granted.</p> <p>In the second case, the entity received shareholder approval for the issue of shares pursuant to a proposed public offer of shares. The shares had not been issued due to delays by the auditor in completing the audit of the entity's 30 June 2018 accounts, required to complete the prospectus for the proposed public offer. The waiver was not granted as the reason for delay in issuing the shares was not considered sufficiently compelling to justify departing from the principle of the rule.</p> <p>In the third case, the entity received shareholder approval under listing rule 10.11 to issue a fixed number of ordinary shares to a related party, no later than one month after the date of the meeting. The entity was unable to issue the ordinary shares within the one month period because it was waiting to receive cleared funds for the ordinary shares from the related party. The entity's circumstances had also materially changed since the shareholder approval, as the entity's share price was trading at a premium of 42% when approved by shareholders. For these reasons the waiver was not granted.</p> <p>In the fourth case, the entity sought a waiver to issue four tranches of convertible notes over the next 20 months. The entity disclosed in the notice of meeting that one convertible note tranche would be used to fast track a definitive feasibility study but there was no structured or well-articulated work program associated with the study. The milestones attached to the other tranches of convertible notes did not have any meaningful connection to the funds being raised, and the final tranche of notes had no milestones attached to it. Additionally the actual degree of dilution to ordinary shareholders was not fixed. For all of these reasons, the waiver was not granted.</p>
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