Listing and Waiver Applications Declined by ASX

1 January 2016 – 30 June 2016

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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 intends to publish on a regular basis[1] high level reasons why it has declined certain listing and waiver applications. This is the first of such publications.

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 preliminary advice on the suitability of an entity for listing where ASX has indicated that the entity is not suitable for listing.

Entity	Reasons for declining application for admission
Entity A	Entity A, a long-term suspended entity, proposed a back door listing transaction involving the acquisition of an unlisted private company incorporated in an emerging market. The private company was a start-up company with no trading history that proposed to develop and operate a business, both at a physical location in an emerging market and online in that and other markets. The type of business concerned typically requires a government licence to operate in any jurisdiction. The private company's only asset of substance was an in-principle approval for the grant of the licence to operate at the proposed physical location. ASX declined Entity A's application for readmission to the official list because ASX was not satisfied that its financial condition, structure and operations and regulatory standing were appropriate for a listed entity. ASX had concerns about the very preliminary nature

[1] The report is for the 6 months ended 30 June 2016. From 1 July 2016, ASX proposes to publish this report on a quarterly basis.

[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 publication may have since restructured their proposals to address ASX's concerns.

	of the business Entity A was proposing to acquire, and the apparent lack of due diligence it had undertaken to verify the legality of certain payments made to procure the in-principle approval and to investigate the requirements to operate the business online in the markets in which it was proposing to engage in that activity.
Entity B	Entity B had recently acquired a 72.5% interest in an offshore company conducting a relatively new wholesaling business in emerging and other markets. The other 27.5% interest in the offshore company had recently been acquired by the CEO of that company. It was proposed that the CEO retain that interest following Entity B's listing on ASX. ASX declined Entity B's application for admission to the official list because ASX was not satisfied that its financial condition and structure and operations were appropriate for a listed entity. ASX was concerned about Entity B's limited operating and financial history, the short term and non-exclusive nature of certain important licences and contracts, and the fact that the entity had adopted a corporate structure that gave a key executive a direct ownership interest in the main operating subsidiary. ASX notes that Entity B did attempt to restructure some aspects of its contractual arrangements to meet ASX's concerns. However, ASX found the split ownership structure of Entity B's proposed main operating subsidiary and the start-up nature of its business to be of sufficient concern to decline the restructured application (see also Entities K – O below).
Entity C	Entity C owned a retail business based in an emerging market. ASX declined Entity C's application for admission to the official list because ASX was not satisfied that its structure and operations were appropriate for a listed entity. ASX was concerned about the very small proposed capital raising and the fact that investors subscribing under Entity C's prospectus would only hold between 1.24% and 3.64% of the ordinary shares on a fully diluted basis.
Entity D	Entity D was a start-up provider of products and services in an emerging market. It had not generated any revenue or profit from its business. ASX declined Entity D's application for admission to the official list because ASX was not satisfied that its structure and operations were appropriate for a listed entity. ASX was concerned, in particular, about Entity D's lack of operating and financial history, an emphasis of matter contained in its most recent audited accounts casting doubts about its ability to continue as a going concern, and the lack of experience of its directors in directing or managing an ASX listed entity. ASX was also concerned by the unexplained resignation of Entity D's original lead adviser and the unusual funding arrangements that had been agreed with its new lead adviser.
Entity E	Entity E proposed a back door listing transaction involving the acquisition of a private company incorporated and carrying on business offshore. ASX declined to approve Entity E's notice of meeting seeking shareholder approval to the transaction on the basis that ASX was not satisfied that Entity E's new structure and operations would be appropriate for a listed entity and therefore ASX would be likely to reject its application for readmission to the official list, when made. ASX held concerns about the limited operating and financial history of the company being acquired, the unusual nature of its business model and the fact that its entire revenue to date was attributable to payments from related entities.
Entity F	Entity F proposed a back door listing transaction involving the acquisition of a private entity that operated a business in an emerging market. ASX declined to approve Entity F's notice of meeting seeking shareholder approval to the transaction on the basis that ASX

	was not satisfied that Entity F's new structure and operations would be appropriate for a listed entity and therefore ASX would be likely to reject its application for readmission to the official list, when made. ASX had concerns about the nominal amount of capital proposed to be raised compared to its very high projected market capitalisation, and the extremely low level of free float (between 0.2% and 0.5%) that Entity F would have following its proposed capital raising.
Entity G	Entity G proposed a back door listing transaction involving the acquisition of a 51% interest in a proposed development located in an emerging market. ASX declined Entity G's application for readmission to the official list because it was not satisfied that Entity G's financial condition and structure and operations upon readmission would be appropriate for a listed entity. In particular, ASX held concerns about the high level of additional debt and equity funding that would be required to progress the development, the lack of disclosure regarding the sources or likelihood of obtaining such funding, the fact that Entity G had not received the required government approvals to proceed with the development and, if it did not receive those approvals, it would not be able to utilize the funds it proposed to raise in a manner consistent with what had been set out in its prospectus.
Entity H	Entity H operated an internet-based business. ASX declined Entity H's application for admission to the official list because ASX was not satisfied that its financial condition and structure and operations were appropriate for a listed entity. ASX was concerned about an emphasis of matter in relation to the entity's ability to continue as a going concern, its history of significant operating losses and negative operating cash flows and the expectation that this would continue, the significant debt that would remain and limited working capital that would be available if Entity H only raised its minimum subscription, and its high cash burn rate and the likely need for it to raise substantial further capital in the short term. ASX was also concerned about Entity H's governance, having regard to disclosures in its prospectus relating to potential prior non-compliance with the Corporations Act requirements relating to continuous disclosure and related party transactions and the nature and materiality of past and ongoing related party transactions.
Entity I	Entity I, a long-term suspended entity, was undertaking a back door listing transaction involving the acquisition of a private company and had issued securities to complete that acquisition ahead of its readmission to the official list. ASX declined Entity I's application for readmission because it uncovered evidence of possible irregularities in connection with the offer of securities under Entity I's prospectus.
Entity J	Entity J proposed a back door listing transaction involving the acquisition of a company incorporated offshore that was intending to become a financier of particular types of projects. ASX declined to approve Entity J's notice of meeting seeking shareholder approval to the transaction on the basis that ASX was not satisfied that Entity J's new structure and operations would be appropriate for a listed entity and therefore ASX would be likely to reject its application for readmission to the official list, when made. ASX was concerned by the speculative and unproven nature of the proposed business, the incomplete nature of the accounts that had been provided for the company proposed to be acquired, the substantial and unsubstantiated value attributed in those accounts to certain investments, and whether Entity J would have the financial capacity to fund its new financing business in the short term, noting that it proposed to undertake a further substantial capital raising in the second half of 2016.

Entity K	Entity K approached ASX for a preliminary view on the acceptability of its structure and operations for a listed entity. It proposed a back door listing transaction involving the acquisition of a 17% interest in a company owning an internet-based business. ASX advised Entity K that ASX generally has concerns where an applicant for listing structures itself so that its business operations are held in a separate unlisted vehicle (OpCo), in which some of the shares are held by the applicant for listing (ListCo) and the balance are held by a separate unlisted vehicle (SepCo) established by or for the benefit of the applicant's promoters or managers.[3] This potentially opens up the door for circumvention of some core principles enshrined in the Listing Rules, including that a listed entity should have only one class of ordinary securities (Listing Rule 6.2) and each shareholder should have one vote for each ordinary security they hold (Listing Rule 6.9). It can also give rise to a number of potential difficulties or concerns, including: • ensuring that the amount and quality of information provided to the market on an ongoing basis is the same as would have been the case if ListCo owned the business operations itself (noting that OpCo will not be subject to the continuous disclosure regime in the Listing Rules or the Corporations Act and, even where ListCo can appoint directors to the board of OpCo, they will have duties of confidentiality to OpCo); • ensuring that the indirect economic interests that the investors in ListCo have in the underlying business operations of OpCo are not able to be diluted by corporate transactions done at the OpCo level; • ensuring that ASX's escrow regime is not compromised at the OpCo level; • if SepCo has any power to control or veto the appointment or removal of the directors and managers of OpCo, the potential that has to interfere with the operation of the market for corporate control; and • generally, the potential for a misalignment of interests and conflict created by giving the promoters or management a direct personal interest in the business operations through SepCo rather than giving them shares in ListCo and thereby aligning their interests with the security holders in ListCo. ASX therefore advised Entity K that if it proceeded with the proposed transaction, it would not have a structure and operations suitable for a listed entity.
Entity L	Entity L approached ASX for a preliminary view on the acceptability of its structure and operations for a listed entity. It proposed a back door listing transaction involving the acquisition of a 51% interest in an offshore technology company. ASX advised Entity L that if it proceeded with the proposed transaction, it would not have a structure and operations suitable for a listed entity, for essentially the same reasons as Entity K above.
Entity M	Entity M announced a proposed transaction involving the acquisition of a 51% interest in an entity whose main asset was a 26% interest in a company proposing to operate a business in an emerging market. ASX examined the announcement and advised Entity M that if it proceeded with the proposed transaction, it would not have a structure and operations suitable for a listed entity, for essentially the same reasons as Entity K above.

[3] Note that these concerns do not extend to normal (incorporated or unincorporated) joint venture arrangements in the mining and oil and gas sector, such as farm-in and farm-out arrangements, where it is common for ASX to list an entity that has a partial interest in a mining or oil and gas project. Those cases may however raise suitability issues if the joint venture agreement gives a joint venture participant disproportionate representation on the governing body of the joint venture or disproportionate decision-making powers.

Entity N	Entity N approached ASX for a preliminary view on the acceptability of its structure and operations for a listed entity. It proposed a back door listing transaction involving the acquisition of two separate 40% interests in certain ventures. ASX advised Entity N that if it proceeded with the proposed transaction, it would not have a structure and operations suitable for a listed entity, for essentially the same reasons as Entity K above.
Entity O	Entity O approached ASX for a preliminary view on the acceptability of its structure and operations for a listed entity. It proposed a back door listing transaction involving the staged acquisition of a 40% interest in an Australian company. ASX advised Entity O that if it proceeded with the proposed transaction, it would not have a structure and operations suitable for a listed entity, for essentially the same reasons as Entity K above.
Entity P	Entity P had recently acquired a 100% interest in an offshore company conducting a distribution business in an emerging market. The offshore company had only recently begun that business and therefore had a very limited operating history. Entity P approached ASX for a preliminary view on the acceptability of its structure and operations for a listed entity. ASX advised Entity P that ASX was not satisfied that its financial condition and structure and operations were appropriate for a listed entity. ASX was concerned about Entity P's limited operating and financial history, corporate structure, the uncertain supply and distribution of its product (including the lack of information regarding contracts it had entered into) and the lack of experience of Entity P's directors in directing or managing an ASX listed entity.

Waiver applications declined over the period

ASX Listing Rule	**Reasons for declining waiver**
Listing Rule 1.1 condition 11 – 3 separate waivers Listing Rule 2.1 condition 2 – 3 separate waivers	In each case, the entity proposed to issue securities at less than 2 cents per share in conjunction with a back door listing transaction and applied for a waiver from the requirement in these rules that securities are issued or sold at a minimum price of 20 cents. Guidance Note 12 *Significant Changes to Activities* (GN 12) makes it clear that ASX will only contemplate granting a waiver from the '20 cent rule' if the issue or sale price of the securities is not less than 2 cents each and certain other conditions are met. Accordingly, the waivers were declined.
Listing Rule 4.7 – 3 separate waivers	Three funds had been admitted to the ASX official list before the introduction of the AQUA rules framework in the ASX Operating Rules. The funds requested a waiver to remove their periodic financial reporting obligations under the Listing Rules on the basis that issuers of ETFs which are AQUA Products under the AQUA rules framework are not required to disclose periodic financial reports. ASX Operating Rule Schedule 10A.3.1(ca) requires an issuer to seek unitholder approval if they request the conversion of securities quoted under the Listing Rules to products quoted under the AQUA rules. A waiver of the periodic financial reporting obligations would have circumvented the requirement for unitholder approval and for this reason the waivers were declined.

Listing Rule 4.8	The entity requested a waiver not to provide the accounts of an unlisted subsidiary which held the entity's main assets. The subsidiary's accounts were not consolidated with the accounts of the entity. This rule requires that if securities in an unlisted entity, or loans or advances to it, are a listed entity's main asset, the listed entity must give ASX the latest accounts of the unlisted entity, together with any auditor's report. The waiver was declined for being inconsistent with the principles underlying the rule.
Listing Rule 6.18	The entity had placed shares to cornerstone investors. The entity wished to grant the investors a top-up right allowing them to participate in future placements of securities on equal terms with other parties to whom securities are offered, to the extent necessary for the cornerstone investors to maintain their percentage shareholding. ASX's policy allows listed entities to enter into agreements of this nature with shareholders with whom the entity has a strategic relationship, provided the shareholder pays the same price as other offerees to participate in an issue. The strategic relationship must encompass more than the investor simply being a major shareholder or source of equity capital. There was no evidence of a strategic relationship (other than the investors' equity investment) or any ongoing or underlying agreement between the parties demonstrating a strategic relationship. The waiver was declined as being inconsistent with ASX policy.
Listing Rule 9.1.3 – 3 separate waivers	In the first case, the entity proposed to acquire a classified asset as part of a back door listing transaction. It requested a waiver from the escrow provisions in Chapter 9 and Appendix 9B of the Listing Rules. These provisions require that securities issued in certain circumstances, including in consideration for the acquisition of a classified asset prior to an initial public offering, are treated as restricted securities subject to escrow. The waiver was declined for being inconsistent with the principles underlying the rule. In the second case, the entity (A) was acquiring the issued capital of an unlisted mining company (B). The transaction constituted a back door listing and the entity was required to comply with chapters 1 and 2 of the Listing Rules as if it were applying for admission to the official list for the first time. The securities to be issued by A to B's shareholders were therefore required to be escrowed on the same basis as a front door listing. B had previously acquired the shares of another entity (C) that was now a wholly owned subsidiary. The entity applied to have 'look through' relief so that it could treat persons who had subscribed cash for their shares in C as "seed investors" rather than vendors, with the result that they would attract a more favourable escrow treatment. ASX's policy is to grant only one level of 'look through' relief (ie in this case, down to the level of B but not C). Accordingly, the waiver was declined. The third case was similar to the second case and declined for the same reasons.
Listing Rule 9.7 – 4 separate waivers	In the first case, the entity requested a waiver to permit ASX escrowed securities to be transferred in a way that would result in a change of beneficial ownership. The waiver was declined for being inconsistent with the principles underlying the rule. In the second case, the entity applied for a waiver to allow it to amend an executed restriction agreement to decrease the number of securities subject to escrow. ASX declined the relief as being inconsistent with the principles underlying the rule and

	also because the market had already traded on the basis that the securities in question would be escrowed in accordance with the executed escrow agreement. In the third case, the entity sought a waiver to permit it to transfer ASX restricted securities that were held in a personal capacity to a superannuation fund. The proposed transfer would have resulted in a change of beneficial ownership of the restricted securities. The waiver was declined for being inconsistent with the principles underlying the rule. In the fourth case, the entity requested a waiver granting 'look through' relief after it had been admitted to quotation on ASX and had signed escrow agreements in place. The waiver, if granted, would have resulted in the escrow being lifted on a substantial number of securities. ASX declined the relief as the market had already traded on the basis that the securities in question would be escrowed in accordance with the signed escrow agreements and it would not be appropriate for ASX to grant look through relief retrospectively.
Listing Rules 10.17 and 10.17A	The entity, a foreign company with its primary listing on an overseas exchange, requested waivers from these rules so that it would not be required to seek shareholder approval to increase the total remuneration paid to directors. ASX policy on granting such waivers to foreign entities is outlined in Guidance Note 4 and recognises that ASX may be prepared to grant a waiver of an ASX Listing Rule where a foreign entity listed on an overseas home exchange is subject to a similar but inconsistent requirement under the rules of its home exchange. There was no requirement in the rules of the entity's home exchange similar to ASX Listing Rules 10.17 and 10.17A. The waiver was declined as not meeting ASX's policy, as outlined in Guidance Note 4.
Listing Rule 14.7 - 2 separate waivers	In the first case, the entity sought a waiver to allow additional time to issue securities which had been approved by shareholders under Listing Rule 7.1 and, by virtue of Listing Rule 7.3.2, had to be issued within 3 months from the date of shareholder approval. The entity wished to issue the securities to professional and sophisticated investors in conjunction with a proposed listing on another securities exchange that was occurring outside the permitted 3 month window. The notice of meeting did not draw any link between the issue of the placement shares and the listing on the other exchange. The waiver was declined for being inconsistent with the principles underlying the rule. In the second case, the entity had obtained shareholder approval for the issue of up to 50,000,000 shares to sophisticated or professional investors. The entity did not issue any shares prior to the end of the 3 month period. The share price of the entity had decreased materially since shareholder approval had been given. The three month time limit in this rule is intended to ensure that issues of securities occur in circumstances that may reasonably be within the contemplation of shareholders when they vote to approve the issue. The waiver was declined for being inconsistent with the principles underlying the rule.