

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

**1 July 2016 – 30 September 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 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 preliminary 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 approached ASX for a preliminary view on the acceptability of its structure and operations for a listed entity. It was a start-up entity proposing to engage a third party to design and manufacture a proto-type high-end consumer product. Entity A would fund the development of the proto-type and then own the intellectual property in the proto-type. It had no other business activities and had not generated any revenue or profit. ASX was not satisfied that its structure and operations were appropriate for a listed entity. ASX was concerned, in particular, that Entity A's business was little more than a concept or idea and its board did not include any directors who had experience or skills in directing or managing a company developing that type of product.

<sup>1</sup> ASX also publishes details of waivers that are 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's primary assets were located in emerging markets. ASX declined Entity B'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 held concerns about Entity B's financial condition, its failure to specify a minimum subscription amount for its offer, the sufficiency of its working capital, its capital structure and fundraising activities, and certain pre-listing transactions with related parties.
Entity C	Entity C proposed a back door listing transaction involving the acquisition of a private company carrying on business in an emerging market. ASX declined to approve Entity C's notice of meeting seeking shareholder approval to the transaction on the basis that ASX would be likely to reject its application for readmission to the official list in due course. ASX was not satisfied that its structure and operations would be appropriate for a listed entity. ASX was concerned, in particular, about the company's capital structure, financial statements, free float and the relatively small capital raising it was proposing compared to its market capitalisation.
Entity D	Entity D approached ASX for a preliminary view on the acceptability of its structure and operations for a listed entity. It proposed to commence business operations overseas as a provider of consumer products. It had no activities and had not generated any revenue or profit. ASX was not satisfied that the entity's structure and operations would be appropriate for a listed entity. ASX was concerned, in particular, that the entity's operations were at an unacceptable early stage of development, with no operating or financial history and without the necessary infrastructure in place to support its business plan.
Entity E	Entity E proposed a back door listing transaction involving the acquisition of a private company that was a start-up developing a technology platform. ASX declined to approve Entity E's notice of meeting seeking shareholder approval to the transaction on the basis that ASX would be likely to reject its application for readmission to the official list in due course. ASX was not satisfied that the entity's structure and operations would be appropriate for a listed entity. ASX was concerned, in particular, that Entity E's proposed technology and operations were at an unacceptable early stage of development.
Entity F	Entity F proposed a back door listing transaction involving the acquisition of a private company developing and constructing a proto-type plant for an industrial process. ASX declined to approve Entity F's notice of meeting seeking shareholder approval to the transaction on the basis that ASX would be likely to reject its application for readmission to the official list in due course. ASX was not satisfied that its structure and operations would be appropriate for a listed entity. ASX was concerned, in particular, that the company did not have the necessary regulatory approvals in place to allow it to operate the core component of its business.

## Waiver applications declined over the period

ASX Listing Rule	Reasons for declining waiver
Listing Rule 2.5 Condition 6	Listing rule 2.5 sets out the conditions for quotation of a secondary class of securities. Condition 6 requires that there is at least 100,000 of such securities on issue and that there is a minimum of 50 holders with a marketable parcel. The entity undertook a rights issue of a secondary class of equity securities. It did not satisfy the minimum number of securities and applied for a waiver from that requirement. The waiver was declined as there was no sufficient basis to justify waiving the rule.
Listing Rules 4.2A.3 and 4.3A	Three entities were separately admitted to the Official List of ASX under the ASX Listing Rules before the introduction of the AQUA rules framework. If they had been admitted under the AQUA rules, they would not be required to provide the half year and preliminary final reports required under the ASX Listing Rules. The entities each requested a waiver not to provide these reports under Listing Rules 4.2A.3 and 4.3A. In an appropriate case, ASX will allow a company to switch from being a listed entity to having its securities quoted on AQUA provided its shareholders approve the transition. Granting the waivers would have circumvented the requirement for shareholder approval and therefore the waivers were declined.
Listing Rules 4.3A, 4.3B and 4.5.2	A foreign incorporated entity listed on an overseas exchange applied for waiver of the reporting requirements in these rules on the basis that it was subject to corresponding requirements under the rules of its home exchange. One of the criteria stipulated in section 3.4 of Guidance Note 4 <i>Foreign Entities listing on ASX</i> for ASX to grant such a waiver is the entity's track record in complying with the listing rules of its overseas home exchange. In this case, the entity had recently been the subject of two notices regarding non-compliance with the overseas home exchange's listing rules. In these circumstances the entity did not satisfy the criteria for relief outlined in Guidance Note 4 and therefore the waivers were declined.
Listing Rule 6.18	<p>The entity announced it would place securities to a cornerstone investor. The entity wished to grant the investor a top-up right which would allow the investor to participate in future placements of securities on equal terms with other parties to whom securities are offered, to the extent necessary for the investor to maintain its percentage shareholding.</p> <p>ASX's policy permits listed entities to enter into agreements of this nature with a shareholder with whom the entity has a strategic relationship, provided the shareholder pays the same price as other offerees in an issue of securities. The strategic relationship must encompass more than the investor simply being a major shareholder or source of equity capital.</p> <p>There was no evidence of such a strategic relationship in this case. Accordingly, the waiver was declined as being inconsistent with ASX policy.</p>

<p>Listing Rule 7.3.2</p>	<p>The entity had entered into a funding agreement for the provision of funding over 15 months through the issue of multiple tranches of convertible notes. It applied for a waiver of the requirement in this rule that any issue of securities approved by security holders under Listing Rule 7.1 must take place within 3 months of the date of the security holder meeting giving that approval. ASX has previously considered granting a waiver of this requirement in circumstances where there was a structured or well-articulated work program associated with the funding facility 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 on conversion of any of the convertible notes and therefore the potential dilution to ordinary shareholders was not known. Granting the waiver would have extended their exposure to this potential dilution. Consequently the waiver was declined.</p>
<p>Listing Rule 9.1.3</p>	<p>The entity proposed to acquire classified assets in the form of exploration licences from an existing ASX-listed entity. The consideration for the acquisition was the issue of fully paid ordinary shares. The entity applied for a waiver of the requirement in this rule that the securities be issued as “restricted securities”. The key tenement on which the entity proposed to undertake the majority of its exploration was only granted in June 2015, and a high percentage of the other tenements being acquired had only been granted within the last 18 months. ASX will consider granting a waiver of this rule where the assets have been held by a listed entity for a reasonable period of time (usually two years or more) and where the market has had an opportunity to assess the value of the assets over that period. In this case the assets had not been held for a sufficient period of time and therefore the waiver was declined.</p>