

ASX Listings Compliance Activities Report

1 July 2019 – 30 September 2019



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Background

As the licensed operator of a listing market, ASX is obliged under the Corporations Act 2001 (Cth)¹ to have adequate arrangements for monitoring and enforcing compliance with its listing rules. Those arrangements are administered by the ASX Listings Compliance team.

The ASX Listings Compliance team also assesses whether applications for admission to the ASX official list conform to the requirements of the listing rules and processes applications for waivers of the ASX listing rules.

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, as well as information about some of its other activities monitoring and enforcing compliance with the listing rules.²

Listing applications

During the period of this report, ASX admitted 9 entities to the official list and reinstated another 9 entities to quotation following the completion of back door listings.

The table below summarises the listings ASX declined during for the period of this report, comprising:³

- applications for admission to the official list that ASX declined;
- requests to approve a notice of meeting containing a resolution of security holders approving a backdoor listing transaction that ASX declined on the basis that ASX would be likely to reject the entity's application for readmission to the official list in due course; and

¹ Referred to in this report as the "Corporations Act". Unless otherwise indicated, references in this report to sections of an Act are to sections of the Corporations Act.

² 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>.

³ This report 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 report may have since restructured their proposals to address ASX's concerns.

- 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 is a technology company providing air treatment solutions for industry and households. It operates primarily in an emerging market. ASX advised the entity that there was a significant likelihood that ASX would exercise its discretion under listing rule 1.19 to decline the entity's application for admission to the official list. ASX was concerned about the jurisdiction where its main business operations are carried on and ASX's experience with entities operating in that jurisdiction not applying appropriate governance standards and having difficulty transferring money out of that jurisdiction.
Entity B	Entity B provides an online marketplace for distribution of goods into an emerging market and a technology platform for sharing accommodation in an emerging market. ASX advised the entity that there was a significant likelihood that ASX would exercise its discretion under listing rule 1.19 to decline the entity's application for admission to the official list. ASX was concerned about the composition of the entity's board, the holding structure of the child entities, the jurisdiction in which it carries on business and its former involvement in cryptocurrency related activities.
Entity C	Entity C proposed to acquire all the issued share capital of an unlisted company that had developed an equities trading platform for portable devices, as part of a backdoor listing transaction. ASX advised the entity that it would exercise its discretion under listing rule 1.19 to decline the entity's application for re-admission to the official list, having regard to the very early stage of the company's business operations and its limited operating and financial history.
Entity D	Entity D proposed to acquire all the issued share capital of an unlisted company that carried on business as an independent testing body servicing the quality control requirements of particular industries, as part of a backdoor listing transaction. ASX advised the entity that it would exercise its discretion under listing rule 1.19 to decline the entity's application for re-admission to the official list having regard to the early stage of the company's business operations, its limited operating and financial history and the fact that it does not have its own laboratory or national accreditation and would therefore be wholly reliant on the laboratory and accreditation of a third party.
Entity E	Entity E is a technology company aiming to improve the well-being of its users from its suite of technology products. ASX advised Entity E that there was a significant likelihood that ASX would exercise its discretion under listing rule 1.19 to decline its application for admission to the official list. ASX was concerned about the early stage of its business operations, its past involvement in cryptocurrency related activities and recent issues ASX had experienced with one of its major shareholders.
Entity F	Entity F proposed to acquire all of the issued share capital of an unlisted mineral exploration company with tenements in Australia and overseas, as part of a backdoor listing transaction. ASX advised the entity that it would exercise its discretion under listing rule 1.19 to decline the entity's application for re-admission to the official list having regard to concerns about its financial condition and the adequacy of its proposed capital raising, and noting that the unlisted company had applied previously for admission to the official list in its own right and that application had been rejected by ASX under listing rule 1.19.

Entity G	Entity G was about to be removed from the official list as a long-term suspended entity. It was effectively a shell following a period of voluntary administration and the sale of all of its assets. It proposed to transform itself into a listed investment company investing in the resources sector as part of a backdoor listing transaction. ASX advised the entity that it would exercise its discretion under listing rule 1.19 to decline the entity's application for re-admission to the official list. ASX was concerned about the appropriateness of using a corporate shell from a failed listing as a listed investment company, the lack of information about the proposed manager and its skills and experience in managing a portfolio of securities in the resource sector, the proposed manager not holding the necessary licence to conduct that activity, the lack of specificity about the entity's proposed investment strategy and the fact that only one of the proposed directors appeared to have any prior funds management experience.
Entity H	Entity H proposed to acquire all the issued shares in an unlisted company intending to design and construct a food processing facility, as part of a backdoor listing transaction. ASX advised the entity that it would exercise its discretion under listing rule 1.19 to decline the entity's application for re-admission to the official list having regard to prior unacceptable dealings ASX had with the proposed lead manager.
Entity I	Entity I is developing and commercialising services and payment infrastructure technology, with its operations primarily in an emerging market. ASX advised the entity that there was a significant likelihood that ASX would exercise its discretion under listing rule 1.19 to decline the entity's application for admission to the official list. ASX was concerned about the entity's operating and financial history, noting in particular its losses from continuing operations in the last two financial years, the material uncertainty relating to the going concern contained in its most recent audited accounts and the absence of any real connection with Australia.
Entity J	Entity J proposes to acquire an unlisted company that operated a mineral processing facility in an emerging market, as part of a backdoor listing transaction. ASX advised the entity that it would exercise its discretion under listing rule 1.19 to decline the entity's application for re-admission to the official list. ASX was concerned about the early stage of the entity's business operations, its corporate structure, its financial condition, the lack of clarity around its legal and beneficial ownership, and the emerging market in which it operates.
Entity K	Entity K proposed to acquire an unlisted entity that operates a payments platform allowing customers to pay for digital goods and services, as part of a backdoor listing transaction. ASX advised the entity that it would exercise its discretion under listing rule 1.19 to decline the entity's application for re-admission to the official list. ASX was concerned about the entity's ongoing involvement with a cryptocurrency exchange and in facilitating payments to multiple organisations engaged in cryptocurrency-related activities, and the involvement of the proposed CEO of the merged entities in other cryptocurrency-related activities separate to the merged entities.
Entity L	Entity L is an online learning platform offering services to education institutions. ASX advised Entity L that there was a significant likelihood that ASX would exercise its discretion under listing rule 1.19 to decline its application for admission to the official list. ASX was concerned about the proposed lead manager, noting a recent ASIC media release regarding criminal action against a director of the proposed lead manager for conspiracy to commit market manipulation.

Entity M	Entity M proposed to acquire all the issued shares of an unlisted company wholly owned by chairman of the entity, as part of a backdoor listing transaction. The company's main asset was a single real estate property requiring re-development. ASX advised the entity that it would exercise its discretion under listing rule 1.19 to decline the application for re-admission to the official list. ASX was concerned about the related party aspects of the acquisition, that the only asset of the company was a single property that would be undergoing re-development for at least the next 2 years and that the company did not hold the necessary planning and regulatory approvals to develop the property and there was no guarantee that it would obtain them. ASX was also concerned about the large amount of the entity capital raising the chairman was proposing to take up, reducing the entity's free float and heightening the concerns about the related party aspects of the acquisition.
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Waiver applications

During the period of this report, ASX granted 185 waivers of the listing rules.

The table below summarises applications for listing rule waivers that were declined by ASX during the period of this report.

ASX listing rule	Reasons for declining waiver
Listing rule 6.18	The entity sought a waiver from listing rule 6.18 to enable it to issue shares to an investor pursuant to a top-up right allowing 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. ASX's (then) policy allowed 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. In this case, there was no evidence of a strategic relationship between the entity and the investor. The waiver was declined as being inconsistent with ASX policy.
Listing rule 6.23.4	The entity sought a waiver from listing rule 6.23.4 to enable it to amend the terms of options on issue to employees. The entity proposed to amend the expiry date of the options from five years to three years from the vesting date. Given the extent of the proposed changes, and the material number of options involved, the waiver was not granted. ASX considered that the entity's shareholders should not be disenfranchised from considering and voting on the proposed amendments.

<p>Listing rule 7.3.2</p>	<p>The entity entered into a funding facility pursuant to which it would receive an amount of funds every 30 days for a period of 12 months. Under the agreement the entity would issue fully paid ordinary shares to the funder, based on a VWAP, but with a minimum floor price. The number of shares involved required security holder approval under listing rule 7.1, which in turn triggered the requirement in listing rule 7.3.2 that the shares be issued within 3 months of the date of shareholder approval. In this case, there was no reason for the delayed issue of shares beyond the three months permitted by listing rule 7.3.2, other than the way in which the funding facility had been structured between the entity and the funder.</p> <p>Where a listed entity has entered into a commercial transaction which calls for the issue of securities (typically as consideration) at future times that necessarily will fall outside three months after the date of a shareholders' meeting, ASX's policy is to permit entities to seek shareholder approval for the issue of all the securities that may be issued under that transaction over the various phases, provided that the milestones which trigger the obligation to issue the securities are appropriate to the entity and the transaction in all the circumstances, and adequate information can be given to shareholders about the future issues of securities. In this case there were no milestones connecting the tranches of funding and no compelling commercial reason for granting the waiver. Accordingly, the waiver was declined as being inconsistent with ASX policy.</p>
<p>Listing rule 7.3.3</p>	<p>The entity proposed a transaction, which contemplated an issue of securities as part of the consideration payable to a vendor of assets. The entity was seeking shareholder approval to the proposed issue of the initial consideration shares. The number of shares involved required security holder approval under listing rule 7.1, which in turn triggered the requirement in listing rule 7.3.3 to specify the issue price for the shares, which either has to be a fixed price or a minimum floor price. The issue price of the consideration shares was the lower of a fixed dollar amount or the VWAP for shares for the period of 30 days up to and including the business day prior to issue. The maximum number of securities that could be issued therefore was not known at the time of the meeting because the formula for determining that number did not include a minimum floor price. The waiver was declined as being inconsistent with ASX policy.</p>
<p>Listing rule 9.7</p>	<p>The entity requested a waiver to permit ASX escrowed securities to be transferred during the escrow period. ASX has traditionally granted such waivers where the transfer does not involve any change in beneficial ownership and the securities remain restricted for the balance of the escrow period. In this case, the entity did not provide evidence that there would be no change in beneficial ownership as a result of the proposed transfer. The waiver was declined as being inconsistent with ASX policy.</p>

Listing rule 10.1	The entity proposed to acquire 100% of the ordinary shares of the target company. A director of the entity was associated with a substantial shareholder of the target company. Listing rule 10.1 requires the security holders of the acquiring entity to approve the acquisition of a substantial asset from a related party or a substantial shareholder. For it to be appropriate to grant a waiver from listing rule 10.1, it must be quite clear that there is no reasonable possibility of the asset being acquired at an over-value. In this case, the substantial shareholder's percentage shareholding in the target company was much greater than its percentage shareholding in the bidder. Accordingly, it could not be assumed there was no economic rationale for the director to exert influence in favour of an overvalued bid. The waiver was declined.
Listing rule 14.7	The entity received shareholder approval under listing rule 10.11 to issue options no later than one month after the date of the meeting. The entity requested a waiver for an extension so that it could issue the options after the one month had expired. The reason given (to undertake an entitlement offer) was not considered by ASX to be sufficiently compelling. Typically, for waivers of this rule to be granted, the delay has to be outside of the control of the entity and relate to matters such as unexpected delays in receiving government or regulatory approvals. The waiver was declined.

Enforcement letters

During the period of this report, ASX issued:

- 78 formal price queries;⁴
- 33 "aware" letters;⁵
- 3 "show cause" letters;⁶ and
- 6 ASIC referrals.⁷

⁴ ASX will generally issue a formal price query when it detects abnormal trading in an entity's securities and, in its discussion with the entity about the matter, the entity tells ASX that it is not aware of any information which has not been announced to the market and which could explain the abnormal trading.

⁵ When ASX has concerns about whether an entity has disclosed market sensitive information at the time it should have under Listing Rule 3.1, it will typically issue an aware letter to the entity. The purpose of an aware letter is to enable ASX to be satisfied that the entity is in compliance with its continuous disclosure obligations under the listing rules.

⁶ ASX will generally issue a show cause letter when it believes there has been a number of serious breaches so it is appropriate to terminate the entity's admission to the official list under listing rule 17.12. The show cause letter gives the entity an ability to demonstrate good reasons for why it should not be removed from the official list. Examples of serious breaches can be poor corporate governance or breach of periodic reporting obligations.

⁷ If ASX suspects that an entity has committed a significant contravention of the listings rules, or that an entity or any other person (such as a director, secretary or other officer of the entity) has committed a significant contravention of the Corporations Act, it is required under the Act to give notice under ss 792B(2)(c) / 821B(2)(c) to ASIC with details of the contravention. The purpose of such notice is so that ASIC can then consider what action, if any, it may wish to take in relation to the suspected contravention. ASX is further obliged under ss 792D / 821C to give reasonable assistance if requested by ASIC.

Listed@ASX Compliance Updates

During the period of this report, ASX published three *Listed@ASX Compliance Updates*:⁸

- [Update 06/19 dated 1 August 2019](#): with detailed guidance on the listing rule ramifications of crypto cryptocurrency-related activities;
- [Update 07/19 dated 19 August 2019](#):
 - noting the publication of an updated version of Guidance Note 9 *Disclosure of Corporate Governance Practices*, which is due to be released on 1 January 2020 when the fourth edition of the Corporate Governance Principles and Recommendations comes into effect;
 - advising early adopters of the fourth edition that ASX will be carefully reviewing their corporate governance disclosures to ensure that they conform to the spirit, intention and purpose of the fourth edition and listing rule 4.10.3 (the ‘if not why not’ reporting requirement);
 - advising of updates to Guidance Note 8 *Continuous Disclosure: Listing Rules 3.1 – 3.1B* and Guidance Note 27 *Trading Policies* to reflect the changes to the law in the Treasury Laws Amendment (Strengthening Corporate and Financial Sector Penalties) Act 2019
 - warning about “ramping” announcements;
 - providing guidance on the listing rule ramifications of “loyalty securities”; and
 - advising of a recent Federal Court judgement affirming the guidance that ASX had previously provided to listed entities that their registries cannot charge a fee for registering a paper-based transfer where their constitution has a prohibition on the charging such a fee.
- [Update 08/19 dated 20 September 2019](#):
 - drawing attention to the proposed changes to ASX’s escrow regime and recommending that entities likely to be affected by the changes seek shareholder approval at their next meeting of shareholders to amend their constitution to incorporate the escrow-related provisions required under listing rule 15.12;
 - reminding entities of the recent Federal Court judgement mentioned above and recommending that all listed entities whose registries charge a fee for registering paper-based transfers check their constitution to ensure it contains an appropriate provision permitting such a fee and, if it does not, that they seek shareholder approval to amend their constitution at their next meeting of shareholders; and
 - noting the publication of ASIC Corporations (Share and Interest Purchase Plans) Instrument 2019/547 increasing the SPP participation limit for each registered holder in a 12-month period from \$15,000 to \$30,000.

⁸ *Listed@ASX Compliance Updates* are free email alerts sent to listed entities to advise of market developments, including proposed changes to ASX Listing Rules and Guidance Notes, and to provide guidance on topical or emerging compliance issues. To access them, you can [subscribe here](#) or download the free Listed@ASX app from the [Apple app](#) store and [Google Play](#). Past editions of *Listed@ASX Compliance Updates* can also be viewed [here](#).