

ASX Listings Compliance Activities Report

1 January 2020 – 31 March 2020



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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 and quoted 11 entities to the official list and reinstated another 2 entities to quotation following the completion of back door listings.³

The table below summarises the listings ASX declined during for the period of this report, comprising:⁴

- applications for admission to the official list that ASX declined;
- requests to approve a notice of meeting containing a resolution of security holders seeking approval for 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 publication as the 'Corporations Act'. Unless otherwise indicated, references in this publication to a section of an Act are to a section of the Corporations Act.

² This information is published by ASX in performance of its obligations under the Corporations Act 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 Admission and quotation data excludes ASX Debt Issuers.

⁴ 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.

- 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 for rejection
Entity A	Entity A proposed to acquire a number of entities that hold licences to cultivate cannabis in Columbia and Lesotho for medical purposes. ASX was concerned about the jurisdictions where the company's proposed business was to be carried on, the very early stage of its business operations, and proposed cash payments to be made to the vendors of the entities that hold the licences. This last feature was considered contrary to the spirit and intent of listing rule 1.1 condition 11 (the listing rule that prohibits cash payments being made to promoters for classified assets).
Entity B	Entity B is developing an exhaled breath temperature measurement device. ASX was concerned about the early stage of its business operations, as well as the fact that an existing shareholder of the company is listed on the ASIC Money Watch website as an unlicensed business that could be involved in a scam.
Entity C	Entity C is developing a multi-stage LNG import and regasification facility in Australia. ASX was concerned about the early stage of its business operations, the fact that it was yet to obtain the necessary government approvals and licences, and the adequacy of its proposed capital raising.
Entity D	Entity D operates a property development and management business and a property investment platform. ASX was concerned about the very early stage of its proposed Australian business operations, the emerging market where its business to date had been carried out, and disclosures in its accounts regarding intercompany related party transactions generating material expenses and revenues for those companies.
Entity E	Entity E is a boutique property development company developing residential and small scale home unit properties in Australia. ASX was concerned about the composition of the board, which would be dominated by executive directors with limited ASX experience, disclosures in the unaudited accounts indicating a reliance on related party loans to conduct the business, and the company's capital structure upon listing. On this last issue, the entity had issued a large number of shares prior to its IPO at a price substantially less than the IPO price.
Entity F	Entity F proposed to acquire a Malaysian incorporated entity that had invented a device which measures cold sweat based on relative humidity. ASX was concerned about the low levels of revenue it was generating from sales of the device, the fact it did not own the intellectual property rights or patents in markets where it proposed to operate, the lack of a sufficient number of independent directors on the board, the fact that it had yet to appoint a lead manager, adviser or broker to market the offer, and the emerging market where the company's business has been carried out to date.
Entity G	Entity G proposed to acquire a business which designs, owns and operates physical data centres, cloud computing platforms and software and hardware solutions for data centres. ASX was concerned about the very high number of performance securities proposed to be issued and the very substantial fees being paid to professional advisers (approximately \$1 million of the \$4 million capital being raised in the backdoor listing).
Entity H	Entity H proposed to acquire a private company developing a medical screening device for the diagnosis of arthritis using artificial intelligence. ASX was concerned about the very early stage of its proposed business operations, its limited operating and financial history, and the preliminary stage of its clinical studies, being pre-commencement of phase 1 and 2 regulatory studies.

Entity I	Entity I proposed to acquire a US company specialising in the commercialisation of a technology based epilepsy management solution. ASX was concerned about the very early stage of its proposed business operations, its limited operating and financial history (noting that the company does not generate any material revenue and has no contracts in place), and the very high number of performance securities proposed to be issued.
Entity J	Entity J proposed to acquire an interest in a business managing cloud based computing infrastructure and also an interest in a business developing search engine technology specialising in the retail sector. ASX was concerned about the multiple and conflicting roles of a director and the company secretary of the entity, through their association with the lead manager and as holders of convertible securities in one of the investee companies.

Waiver applications

During the period of this report, ASX granted 78 waivers⁵ 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
1.1 condition 12 – three separate waivers	<p>In two of the cases, the entities sought a waiver of the admission condition in this rule that if the entity has options on issue, the exercise price for each underlying security must be at least 20 cents. This was in conjunction with waivers the entities sought of the requirement in listing rule 2.1 condition 2 (see below). The waivers of listing rule 2.1 condition 2 were refused and so it was not considered appropriate to grant the entities a waiver of listing rule 1.1 condition 12.</p> <p>In the third case, the entity sought a waiver to allow it to have 30 million performance rights on issue with a nil exercise price. The terms of the performance rights were not considered appropriate and equitable and therefore breached listing rule 6.1. Accordingly, ASX declined the waiver.</p>
2.1 condition 2 – two separate waivers	<p>Two entities separately made applications for a waiver of the quotation condition in listing rule 2.1 condition 2 that the issue price or sale price of securities sought to be quoted must be not less than 20 cents. Both entities had entered into deeds of company arrangement disposing of substantially all of their assets and were essentially corporate shells.</p> <p>Waivers are usually only granted of this rule where the entity's shares last traded above \$0.02 and the entity is intending to offer securities in a backdoor listing at a price at or above \$0.02. In both of these cases, the entity's shares were trading above \$0.02 before the securities were suspended. However, as the entities had since disposed of substantially all of their assets and were now shells, the last traded prices were meaningless. The waivers were refused and the entities were required to offer securities at a minimum of \$0.20 per share.</p>
6.18 – three separate waivers	<p>As part of separate commercial transactions, three separate entities proposed to offer anti-dilution rights to other parties to maintain their percentage shareholding in the entities by having a right to participate in future issues of securities. ASX considers such anti-dilution arrangements to be contrary to the spirit and intent of listing rule 6.18, as they effectively give the holder of the anti-dilution rights the</p>

⁵ Includes waivers for ASX Debt Issuers.

	<p>ability to maintain a percentage of the issued capital in much the same way that a percentage option would.</p> <p>Prior to 1 December 2019, ASX granted waivers from listing rule 6.18 to permit an entity to give an anti-dilution right to a strategic security holder. The introduction on 1 December 2019 of listing rule 10.11.3 extending listing rule 10.11 to substantial (10%+) holders with board representation cuts across the operation of these waivers.</p> <p>Section 2.11 of Guidance Note 25 <i>Issues of Equity Securities to Persons in a Position of Influence</i> states that following the introduction of listing rule 10.11.3, ASX will no longer grant these waivers from listing rule 6.18. Accordingly the waivers were refused.</p>
6.23.3	<p>The entity sought a waiver of listing rule 6.23.3 to permit it to amend the terms of unquoted options to decrease the exercise price and extend the expiry date. The changes could have a potentially material dilutionary impact on the holders of the entity's ordinary shares. A waiver of listing rule 6.23.3 was not considered appropriate in the circumstances.</p>
7.3.2	<p>The entity proposed to issue ordinary shares in stages to a third party as part payment for a joint venture. The share issues were to occur later than three months from the date of shareholder approval, as required by listing rule 7.3.2. Although the number of securities to be issued was fixed and the degree of dilution was known, the milestones for the share issues to occur were not clearly defined and therefore shareholders were not able to give an informed consent to the issue. The waiver was declined.</p>
10.11	<p>The entity proposed to undertake an issue of converting notes on a pro-rata basis to its ordinary security holders, including related parties. The offer was sub-underwritten by related parties. A term of the converting notes permitted the entity to elect to satisfy interest payments via the issue of interest notes. The entity sought a waiver from listing rule 10.11 to permit related parties to be issued interest notes, without security holder approval. ASX declined the waiver. ASX did not consider it appropriate that security holders should be denied the right to vote on whether the related parties should be issued the interest notes.</p>
10.11.3	<p>The entity sought a waiver from the requirement for security holders to approve an issue of equity securities to a 10%+ substantial holder. The entity had made a concurrent application for a waiver of listing rule 6.18 (see above) to allow the 10%+ substantial holder to maintain its percentage interest in the entity. The waiver of listing rule 6.18 was refused and so it was not considered appropriate to grant the entity a waiver of listing rule 10.11.3.</p>
10.13.5 – two separate waivers	<p>In the first instance, the entity proposed to issue ordinary shares at 2 cents per share to related parties to repay a loan facility. The proposed share issue to repay the loan facility was to occur in connection with a re-compliance transaction under listing rules 11.1.2 and 11.1.3. The entity had sought a waiver from listing rule 10.13.3 (now listing rule 10.13.5) so that the share issue to the related parties could occur later than 1 month after shareholder's approved the issue, as required by that rule. The entity had also applied for a waiver from listing rule 2.1 condition 2 to permit it to offer securities at a price less than 20 cents for the offer of shares as part of the re-compliance transaction. The proposed issue of ordinary shares the subject of the listing rule 10.13.3 waiver was dependent upon the grant of the waiver from listing rule 2.1 condition 2 to allow the entity to issue shares at 2 cents each. The waiver from listing rule 2.1 condition 2 was not granted (as explained for</p>

	<p>that rule above). Accordingly, the waiver from listing rule 10.13.3 was also not granted.</p> <p>In the second instance, subject to obtaining shareholder approval pursuant to listing rule 10.11, the entity proposed to issue shares in consideration for corporate advisory services provided by an entity associated with, and controlled by, a director of the entity. The entity sought a waiver from listing rule 10.13.5 so that the issue of shares could occur later than one month after obtaining shareholder approval. The entity provided no compelling reason to explain why it was necessary to issue the shares later than the one month deadline stipulated in listing rule 10.13.5. Accordingly, the waiver was refused.</p>
<p>14.7 – four separate waivers</p>	<p>In the first case, the entity sought and received shareholder approval under listing rule 10.11 for the issue of fully paid ordinary shares under a share subscription deed in three different tranches. The entity was granted a waiver from listing rule 10.13.3 (now listing rule 10.13.5) to permit the notice of meeting not to state that the shares would be issued within one month but to state that the third tranche of shares were to be issued on or before 5 March 2020. The subscriber for the shares was unable to secure and repatriate the funds for the third tranche by 5 March 2020 and sought a waiver to allow that date to be extended. ASX did not view the inability for the subscriber to obtain funding for the third tranche as a sufficiently compelling reason to grant a waiver permitting a further extension of time for the shares to be issued. In addition, the circumstances of the entity had significantly changed from the time the original shareholder approval was given. The waiver was declined.</p> <p>In the second case, the entity had received approval from its shareholders under listing rule 7.1 to undertake an issue of shares. The entity was not able to complete the issue within the three month period required by listing rule 7.3.4. For waivers of listing rule 14.7 (as it relates to listing rule 7.3.4) to be granted, the delays typically have to be outside of the control of the entity and relate to matters such as unexpected delays involving government or regulatory approvals. There were no compelling reasons provided to warrant the grant of waiver.</p> <p>In the third case, the entity received shareholder approval at a general meeting under listing rule 7.1 to approve the issue of ordinary shares to be issued upon conversion of notes, options to be granted on conversion of the notes and ordinary shares to be issued in lieu of accrued interest payable on the notes (collectively the ‘securities’). The issue of the securities to note holders was required by listing rule 7.3.4 to occur no later than three months after the date of the meeting. The entity requested a waiver of listing rule 14.7 to permit it to issue the securities later than the three month time limit. Again, there was no clear and compelling reason for the issue to be made at a later date and so the waiver was refused.</p> <p>In the fourth case, the entity had received shareholder approval under listing rule 10.11 for the issue of shares as consideration shares for an acquisition. In accordance with listing rule 10.13.3, the notice of meeting stated that the entity would issue the shares no later than one month after the date of the meeting. The entity was not able to issue the shares within this period and sought a waiver to issue the shares at a later date. As there had been a material change to the entity's circumstances since the date of the shareholder meeting, the waiver was declined.</p>

Enforcement letters

During the period of this report, ASX issued:

Type of enforcement letter	No. of letters
Price query letter ⁶	60
Aware letter ⁷	22
Show cause letter ⁸	1
ASIC referral ⁹	2

Listed@ASX Compliance Updates

During the period of this report, ASX published the following Listed@ASX Compliance Updates:¹⁰

Update No.	Date Released	Summary
<u>01/20</u>	03/02/20	With: <ul style="list-style-type: none">• a reminder about the new rules that came into effect on 1 December 2019 for notifying ASX about a proposed issue of securities and the actual issue of securities using an Appendix 3B, 2A or 3G (as applicable);• information about upgrades to the Appendix 3B and 4A online forms that were made on 22 January 2020 and a reminder that the of the online version of those forms became mandatory on and from 1 February 2020, with ASX no longer accepting PDF versions of these forms on or after that date;• information about updates to the MS Word version of the Appendix 3B made on 31 January 2020 (available for emergency use only where an entity is not able to access the online version of the Appendix 3B); and

⁶ ASX will generally issue a 'price query letter' 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. For further information about price query letters, see section 8.3 of Guidance Note 8 *Continuous Disclosure: Listing Rules 3.1 – 3.1B*.

⁷ ASX will typically issue an 'aware letter' to the entity when it has concerns about whether an entity has disclosed market sensitive information at the time it should have under listing rule 3.1. The letter will ask when the entity became aware of the information in question and test when it should have been disclosed under the listing rule 3.1. For further information about aware letters, see section 8.4 of Guidance Note 8 *Continuous Disclosure: Listing Rules 3.1 – 3.1B*.

⁸ A 'show cause letter' is a letter initiating a process to terminate an entity's admission to the official list under listing rule 17.12. It will outline the reasons why ASX is proposing to terminate the entity's admission to the official list and ask it to 'show cause' why it should not be removed from the official list.

⁹ If ASX suspects that an entity has committed a significant contravention of the listings rules, or that a listed entity or any other person (such as a director, secretary or other officer of a listed entity) has committed a significant contravention of the Corporations Act, it is required to give notice under sections 792B(2)(c) / 821B(2)(c) to ASIC with details of the contravention. The purpose of the notice is so that ASIC can then consider what enforcement action, if any, it may wish to take in relation to the suspected contravention.

¹⁰ *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](#).

		<ul style="list-style-type: none"> information about updates to the MS Word versions of the Appendix 2A and 3G forms available on ASX Online.
<u>02/20</u>	03/03/20	<p>With:</p> <ul style="list-style-type: none"> information about an update to Guidance Note 8 <i>Continuous Disclosure: Listing Rules 3.1 – 3.1B</i>; guidance on the new requirement in listing rule 15.5 to state who has authorised the release of an announcement to the market a reminder for quarterly reporting entities that they must use the new form of Appendix 4C or Appendix 5B (as applicable) published with the Listing Rule changes that came into effect on 1 December 2019 for their quarterly cash flow reports beginning with the quarter ended 31 March 2020; and a reminder for Appendix 4C reporters about the new requirement in listing rule 4.7C to produce quarterly activity reports beginning with the quarter ended 31 March 2020.
<u>03/20</u>	31/03/20	<p>With:</p> <ul style="list-style-type: none"> guidance on continuous disclosure obligations relating to COVID-19; a reminder of the importance of observing listing rule 15.7 and not releasing information that is for release to the market to anyone else unless and until it has been given to ASX and has been released by ASX to the market; an outline of ASX’s COVID-19 related temporary emergency capital raising relief measures; a link to ASIC’s guidance on fair treatment in capital raisings; a link to ASIC’s ‘no action’ position and GIA/AIRA/LCA’s guidance on upcoming AGMs; information about reporting relief granted by ASX to dual ASX/NZX listed entities; information about ASX’s willingness to consider case-by-case requests for reporting relief for other listed entities with a 30 September, 31 December or 31 March balance date; a further reminder for quarterly reporters that they must use the new form of Appendix 4C or Appendix 5B (as applicable) published with the Listing Rule changes that came into effect on 1 December 2019 for their quarterly cash flow reports for the quarter ended 31 March 2020; a further reminder for Appendix 4C reporters about the new requirement in listing rule 4.7C to produce quarterly activity reports beginning with the quarter ended 31 March 2020; guidance that ASX would not be changing or granting relief from its long term suspended entity policy on account of COVID-19; and information about ASX’s enforcement activities in connection with misleading COVID-19 announcements.
