

# **ASX Listings Compliance Activities Report**

**1 October 2020 – 31 December 2020**



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### Background

As the licensed operator of a listing market, ASX is obliged under the Corporations Act 2001 (Cth)<sup>1</sup> 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.<sup>2</sup>

This 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.

This report excludes data on ASX Debt Listings.

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<sup>1</sup> 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.

<sup>2</sup> 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>.

## Listing applications

During the period of this report, ASX admitted 58 entities to the ASX official list and reinstated 13 entities to quotation following the completion of a backdoor listing. ASX rejected<sup>3</sup> 5 applications seeking admission to the ASX official list and 3 applications seeking to be reinstated to quotation following the completion of a backdoor listing. They were rejected for the following reasons:

Entity	Reasons for rejection
Entity A	ASX had concerns about the early stage of the entity's due diligence on a proposed backdoor listing transaction and the fact that the proposed use of funds from its capital raising had a significant proportion of funds set aside for purchases of unspecified "complimentary assets" in the future.
Entity B	ASX had concerns about the early stage of the entity's due diligence on a proposed backdoor listing transaction and the fact that the proposed use of funds from its capital raising had a low level of funds allocated to operational activities and a high level of funds allocated to items with a substantial degree of uncertainty attached to them.
Entity C	ASX had concerns about the early stage of the entity's business, the adequacy of its proposed fundraising to support its business operations and the substantial number of shares proposed to be issued to its joint lead managers as remuneration for advisory services.
Entity D	ASX had concerns about the early stage of the entity's business and its limited operating and financial history.
Entity E	ASX had concerns about the information provided to ASX on the nature of the entity's proposed operations, the adequacy of its proposed capital raising, the absence of any substantial connection between the entity and Australia, and the potential conflicts created by the multiple roles of a particular director.
Entity F	ASX had concerns about the early stage of the entity's business, with the entity not having received a key regulatory approval needed to sell its products.
Entity G	ASX had concerns about the early stage of the entity's business, with the entity not having received key licences and authorisations needed to sell its products.
Entity H	ASX had concerns about the early stage of the entity's business, with the entity not having received the necessary development approval for its proposed business and needing to secure a finance facility or to raise further capital to fund its proposed business.

## Waiver applications

During the period of this report, ASX granted 152 waivers of the listing rules. It declined the following 10 waivers for the following reasons:

ASX listing rule	Reasons for declining waiver
4.2A.2	The entity requested a waiver of the requirement to provide reviewed financial accounts within two months of its half year end because its auditor had been unable to complete the review of those accounts by the due date. This requirement ensures the timely release of reviewed financial information to the market. If an entity fails to

<sup>3</sup> Rejections include both rejections of Appendix 1A and Appendix 1C applications for admission or re-admission to the ASX official list and rejections of applications for in-principle advice on an entity's suitability for admission to the official list.

	meet this requirement, it is appropriate that its securities are suspended from trading under listing rule 17.5. Accordingly, the waiver was declined.
4.5.2	The entity requested a waiver of the requirement to provide audited financial statements within three months of its financial year end because its auditor had been unable to complete the audit of those accounts by the due date. This requirement ensures the timely release of audited financial information to the market. If an entity fails to meet this requirement, it is appropriate that its securities are suspended from trading under listing rule 17.5. Accordingly, the waiver was declined.
6.23.3 2 separate waivers	<p>In the first case, the entity requested a waiver to allow it to cancel performance options and replace them with new performance options with different performance milestones, a reduced exercise price and an increased period for exercise, contrary to listing rule 6.23.3. The number of options affected by the proposed changes was material.</p> <p>In the second case, the entity proposed to incentivise holders of quoted options to exercise them by offering each holder who exercised their option a further option. This would have had the effect of increasing the number of securities received on exercise, which is not permitted by listing rule 6.23.3.</p> <p>In each case, the market had traded on the basis of the existing rights attaching to the options, making it inappropriate to grant a waiver of listing rule 6.23.3. Accordingly, the waivers were declined.</p>
7.3.4	The entity requested a waiver to extend the deadline for the issue of securities approved by security holders under listing rule 7.1 from 3 months after the date of the meeting granting the approval, to up to 36 months after the date of that meeting. There was no clear and compelling commercial reasons for the issue of the securities to be structured in this manner. The waiver was declined.
7.11.3	The entity proposed to undertake a non-renounceable rights issue with a ratio yet to be determined but likely to be between 2 for 1 and 5 for 1. It sought a waiver of the requirement in listing rule 7.11.3 that the ratio of securities offered must not be greater than 1 for 1. The entity had no business activities and did not have a sufficient level of operations for a listed entity. The waiver was declined.
10.13.5 3 separate waivers	<p>In the first case, the entity sought a waiver to extend the deadline for the issue of securities to a related party approved by security holders under listing rule 10.11, from one month after the date of the meeting granting the approval, to up to 60 months after the date of that meeting. Shareholders were not able to give properly informed consent to the issue of the securities due to a lack of certainty about the number of securities that may be issued and the price at which they may be issued. The waiver was declined.</p> <p>In the second case, the entity was proposing to seek security holder approval under listing rule 10.11 to allow a related party to enter into an agreement to sub-underwrite the exercise of options. The entity sought a waiver to extend the deadline for the issue of securities to the related party under the sub-underwriting agreement, from one month after the date of the meeting granting the approval, to 3 months after the date of that meeting. The related party was also an option holder and had made no commitment to exercise his options. This effectively gave the related party an election between exercising his options by their expiry date and receiving the underlying securities under the options, or not exercising his options and acquiring the underlying securities later under the sub-underwriting agreement. In those circumstances, it was not considered appropriate to extend the deadline under listing rule 10.13.5 as that would allow the meeting of security holders to be held earlier than might otherwise be the case, when security holders would not have material information about whether</p>

	<p>the related party had, or had not, exercised his options. For that reason, the waiver was declined.</p> <p>In the third case, the entity sought a waiver from listing rule 10.13.5 to issue securities to a related party later than the one month period permitted by the rule. There was no clear and compelling commercial reasons for the issue of the securities to be structured in this manner. Accordingly, the waiver was declined.</p>
10.14	<p>The entity sought a waiver from listing rule 10.14 to grant performance rights to directors under an equity incentive plan. Under listing rule 10.14, security holders may approve an issue of securities to a director pursuant to an employee incentive scheme for a period of up to three years. The notice of meeting must contain the information required by listing rule 10.15. Waivers from listing rule 10.14 have previously been granted on the basis that where a future issue of securities to a related party is satisfactorily disclosed in an initial public offering document, persons who subscribe under the IPO with notice of the future issue of securities to the related party may be taken effectively to have consented to the issue, and it is unnecessary to submit the issue to a meeting of security holders for approval. The initial public offering prospectus must contain adequate disclosure about the proposed issue of securities to the directors. In this case the material terms of the performance rights had not been determined, and the prospectus did not contain adequate disclosure about the proposed issue of the performance rights. The waiver was declined.</p>

## Enforcement letters

During the period of this report, ASX issued the following enforcement letters.

Type of enforcement letter	No. of letters
Price query <sup>4</sup>	90
Aware letter <sup>5</sup>	29
Show cause letter <sup>6</sup>	0
ASIC referral <sup>7</sup>	5

## Listed@ASX Compliance Updates

*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

<sup>4</sup> 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*.

<sup>5</sup> 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*.

<sup>6</sup> 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.

<sup>7</sup> 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.

on topical or emerging compliance issues. You can subscribe to and view *Listed@ASX Compliance Updates* [here](#) or download the free Listed@ASX app from the [Apple app store](#) and [Google Play](#).

During the period of this report, ASX released the following *Listed@ASX Compliance Updates*:

Update	Summary
10/20	Published on 19 November 2020 covering: <ul style="list-style-type: none"> <li>• the expiry of ASX’s temporary emergency capital raising relief;</li> <li>• extended reporting and lodgement deadlines for listed entities to lodge financial reports;</li> <li>• upcoming changes to ASX’s online forms; and</li> <li>• the proposed new implementation date for the CHES Replacement project.</li> </ul>
11/20	Published on 1 December 2020 covering: <ul style="list-style-type: none"> <li>• the release on 30 November 2020 of ASX’s consultation paper entitled <i>Proposed Listing Rules changes: online forms, notification of security issues and corporate action timetables</i>.</li> </ul>
12/20	Published on 16 December 2020 covering: <ul style="list-style-type: none"> <li>• a minor change to Guidance Note 5 and more significant changes to Guidance Note 8 regarding earnings guidance and earnings surprises; and</li> <li>• the set-up of a training environment to test ASX’s new online forms.</li> </ul>

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