



# ASX Listings Compliance Activities Report

**1 July 2021 - 30 September 2021**

## 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<sup>2</sup> high level reasons why it has indicated an intention to decline certain listing applications<sup>3</sup> and why it has rejected certain waiver applications, as well as information about some of its other activities monitoring and enforcing compliance with the listing rules.

## Listing applications

During the period of this report, ASX admitted 70 entities to the ASX official list and quoted their securities and reinstated 3 entities to quotation following a backdoor listing. ASX indicated an intention to decline 8 applications seeking admission to the ASX official list and 2 applications seeking to pursue a backdoor listing for the reasons summarised in the table below.

The table below includes:

- applications for admission to the official list that ASX has indicated an intention to decline;
- requests to approve a notice of meeting containing a resolution of security holders seeking approval for a backdoor listing transaction that ASX has declined to approve 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 in-principle advice on the suitability of an entity for listing where ASX has indicated that it is likely to determine that the entity is not suitable for listing.

Entity	Reasons for ASX notifying an intention to decline
Entity 01	ASX had concerns about the early stage of the target's business, especially its minimal revenue and limited source of revenue.
Entity 02	ASX had concerns about the early stage of the entity's operations, especially regarding its therapeutical platforms which had not yet commenced phase 1 trials or were at pre-clinical stage of development.

<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.

<sup>3</sup> It should be noted that this is a point-in-time publication reflecting applications to be admitted to the official list as an ASX Listing or ASX Foreign Exempt Listing, where ASX has indicated during the period of this report that it intends to decline the application. Some of the entities mentioned in this or in earlier editions of this publication whose listing applications ASX indicated an intention to decline may have since restructured their proposals to address ASX's concerns. It should also be noted that this publication does not include data on ASX Debt Listings.

Entity	Reasons for ASX notifying an intention to decline
Entity 03	ASX had concerns about the early stage of the entity's exploration activities and that less than half of the funds proposed to be raised were allocated to exploration activities.
Entity 04	ASX had concerns about the entity operating from an emerging market that the primary source of revenue seemed to come from a related party and the early stage of its business operations.
Entity 05	ASX had concerns about the fact that the entity would not have acquired an ownership interest in a relevant asset on which its business operations were based prior to the proposed date of admission.
Entity 06	ASX had concerns about the proposed ownership structure and composition of the board in light of the involvement of the 75% controlling shareholder and state owned entities.
Entity 07	ASX had concerns about conflicts, lack of disclosure and the level of investment in the entity's primary asset.
Entity 08	ASX had concerns about the entity's proposed investments and prior operations, the fact it was placed in administration in 2017, and the limited experience of the proposed board.
Entity 09	ASX had concerns about the early stage of the entity's business, in particular its limited operating and financial history in combination with limited revenue generation, and the proposal to acquire a business in which the chair of the entity was the majority shareholder. ASX was also concerned that there was no intention to appoint a lead manager.
Entity 10	ASX had concerns about a related party retaining a significant holding in the entity's main operating subsidiary.

## Waiver applications

During the period of this report, ASX granted 163 waivers and declined 7 waivers of the listing rules. ASX's reasons for declining those waivers are summarised in the table below.

ASX LR	Reason for declining waiver
4.5.2	ASX had granted an ASX Class Waiver for listed entities from Listing Rule 4.5.1 in line with the ASIC Corporations (Extended Reporting and Lodgements Deadlines—Listed Entities) Instrument 2020/451, dated 15 May 2020 and subsequent extension under Instrument 2021/315, dated 26 April 2021 ('Amended ASIC Relief'). The entity had previously been granted a waiver from Listing Rule 4.5.2 to allow it to lodge its audited accounts one month after the due date, being 31 July 2021, in circumstances where its auditor had been unable to complete the audit due to Covid-19. The entity requested a further extension of an additional two weeks. The waiver was not granted as it was not considered appropriate or consistent with ASX policy to grant further extensions.
6.23.3	The entity proposed to incentivise holders of unquoted options with a rebate for each option. This proposal had the effect of reducing the exercise price, which was not permitted by Listing Rule 6.23.3. The market has traded on the basis that the options would be converted at a certain exercise price till expiry. Further, the number of quoted options was not insignificant and would have a significant effect on the entity's quoted securities. Accordingly, a waiver of Listing Rule 6.23.3 was not considered appropriate in the circumstances and was therefore not granted.
7.3.4	Where a listed entity has entered into a commercial transaction which calls for the issue of securities as consideration at future times that are more than 3 months after the date of a shareholders' meeting, ASX's policy is to permit entities to seek shareholder approval for the issue provided that the milestones to be achieved are appropriate and adequate information can be given to shareholders

ASX LR	Reason for declining waiver
	about the future issues of securities. In this instance the milestone, being the elapsing of time, was not considered appropriate and the waiver was not granted.
9.1	The entity requested ASX to consider whether cash formula relief could be granted to certain shareholders on the basis that they had effectively reinvested the funds that they would have otherwise received in cash from an acquisition. ASX was not in favour of the request since no cash had in fact been paid, there were common related parties and there was the potential to game the escrow regime.
9.6	The proposed transfer of options would lead to a change in beneficial ownership and there was no compelling reason provided. The waiver was not granted.
10.11 Declined twice	Exception 4 of Listing Rule 10.12 exempts related party participation in security purchase plans from the requirement for prior ordinary security holder approval because it is a type of issue that offers participation to all existing security holders in a way that, while not pro rata, is made on equal terms and is considered to be fair. The entity was conducting a security purchase plan. The offer included an offer for shares and attaching options. Due to the attaching options, the structure of the offer did not fall within the ASIC Corporations (Share and Interest Purchase Plans) Instrument 2019/547 ('ASIC Instrument 2019/547') so the offer was to be made under a prospectus. The attaching options did not fall within exception 4 of Listing Rule 10.12 and the entity was seeking a waiver under Listing Rule 10.11 to enable directors to receive these attaching options under the share purchase plan without shareholder approval. It was considered inconsistent with precedent and policy to grant such a waiver where the entity was not seeking shareholder approval of the share purchase plan for the purposes of Listing Rule 7.1. The waiver was therefore not granted.

## Enforcement letters

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

Type	Number of letters
Price query <sup>4</sup>	67
Aware <sup>5</sup>	16
Show cause <sup>6</sup>	0
ASIC referral <sup>7</sup>	4

<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 under section 792B(2)(c) of the Corporations Act to give a notice 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.



## 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 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
06/21	Published on 13 July 2021 covering: <ul style="list-style-type: none"><li>• reminder to use new online forms;</li><li>• reminder to Appendix 4C quarterly reporters to clearly identify their activity reports in the title; and to use most current version of cash flow template.</li></ul>
07/21	Published on 18 August 2021 covering: <ul style="list-style-type: none"><li>• lodging draft notices of meeting with ASX;</li><li>• reminder of FY22 annual listing fees; and</li><li>• grouping of securities issued under employee incentive schemes in online forms.</li></ul>
08/21	Published on 30 September 2021 covering: <ul style="list-style-type: none"><li>• disclosure of JobKeeper payments;</li><li>• CHES Replacement: Public Consultation on Tranche 3 and Combined Rules Package;</li><li>• CHES statement issuer logo review; and</li><li>• ASX Market Announcements closes one hour later during daylight saving.</li></ul>

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