



# ASX Listings Compliance Activities Report

1 April 2021 - 30 June 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 44 entities to the ASX official list and quoted their securities and reinstated 6 entities to quotation following a backdoor listing. ASX indicated an intention to decline 9 applications seeking admission to the ASX official list and 3 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 entity's business and its limited operating history.
Entity 02	ASX had concerns about the early stage of the entity's business, its limited operating and financial history and that no patents were registered or pending in respect of intellectual property fundamental to its business. ASX was also concerned that to date the entity had only issued two invoices for work performed and that neither of them had been paid.

<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.

<b>Entity</b>	<b>Reasons for ASX notifying an intention to decline</b>
Entity 03	ASX had concerns about the entity operating in an emerging market, the fact that the entity only had a 40% minority interest in a number of its key businesses due to regulatory restrictions in that market, and the fact that its board of directors did not include anyone with relevant ASX experience.
Entity 04	ASX had concerns about the high regulatory risks involved in the entity's business, an ongoing external regulatory review of the entity's key license, its financial condition, and the lack of detail with respect to the proposed use of funds to be raised under its IPO.
Entity 05	ASX had concerns about the early stage of the entity's bio-tech business, its limited operating and financial history, and the fact it had not commenced clinical trials and had not finalised its licensing arrangements.
Entity 06	ASX had concerns about the early stage of the entity's business, its limited operating and financial history, its limited revenue, and the fact that it had not yet been granted the necessary licenses in two key jurisdictions for its planned expansion.
Entity 07	ASX had concerns about the early stage of the target company's operation evident from its limited revenue and unproven business model.
Entity 08	ASX had concerns about the early stage of the entity's business and the absence of any signed contracts of sale for, or revenue from, its main product.
Entity 09	ASX had concerns about the early stage of the entity's business, its limited operating history, its limited revenue and the fact that its product had yet to be developed and commercialised in any meaningful way and the main facility needed to produce its product had yet to be constructed.
Entity 10	ASX had concerns about the early stage of the entity's business, the absence of any development approval or completed design work for a key facility, the fact that the entity had yet secured key debt funding or offtake arrangements, and the proposed retention of a minority interest in its business by the vendors of the business.
Entity 11	ASX had concerns about the entity's intention to use the proceeds of a proposed capital raising to pay down existing debt accumulated in respect of prior business and acquisition activities, the appointment of a lead manager with little to no experience in IPOs and the proposed composition of the entity's board.
Entity 12	ASX had concerns about the early stage of the entity's cannabis-related business, its limited operating history, minimal revenue, the fact that its main intended market of operation does not presently permit the import of key raw materials and the entity had yet to commercialise its main product line. ASX was also concerned about the lack of information provided in the entity's submissions in relation to the further jurisdictions in which it intended to operate its business and its readiness to commence operations in those jurisdictions.

## Waiver applications

During the period of this report, ASX granted 127 waivers and declined 8 waivers of the listing rules. ASX's reasons for declining those waivers are summarised in the table below.

<b>ASX LR</b>	<b>Reason for declining waiver</b>
7.3.4	The entity had amended the terms of certain convertible notes that had been on issue for a number of years to provide that the holder was entitled to convert up to 50% of the principal amount and 100% of the capitalised interest over the term of the notes into shares on their conversion date. It

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**ASX LR Reason for declining waiver**


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proposed to seek shareholder approval under rule 7.1 to the issue of shares in accordance with the amended terms of the convertible notes. However, the conversion date was some 33 months after the date of the shareholder meeting to approve the issue of the shares, in breach of the 3 month requirement in rule 7.3.4.

As set out in section 7.2 of Guidance Note 21, ASX will generally only grant a waiver of rule 7.3.4 where there is a clear and compelling commercial reason for the issue to be made at a later date. Otherwise, ASX expects entities to arrange the date on which they seek approval to an issue of equity securities under rule 7.1 to comply with the 3 month time constraint in rule 7.3.4 and, if for any reason the issue is not completed within that timeframe, to seek fresh approval under that rule. The entity could not demonstrate a clear and compelling commercial reason for structuring the convertible notes in this way and so the waiver was declined.

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7.3.4 The entity proposed to issue deferred consideration shares in connection with a proposed acquisition more than 3 months after the date shareholders approved the issue. The quantum of shares proposed to be issued was determined by a formula linked to the financial performance of another entity, separate and unrelated to the entity being acquired. The entity could not demonstrate a clear and compelling commercial reason for structuring the transaction in this way and so the waiver was declined.

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7.15 The entity proposed to undertake a capital raising by way of an entitlement offer to facilitate a restructure of its debt facilities. The transaction required shareholder approval and the proposed record date for the entitlement offer was less than 4 business days after the date of the shareholders' meeting to approve the transaction, in breach of rule 7.15. The entity sought a waiver of rule 7.15 to facilitate its proposed record date. Rule 7.15 is intended to provide shareholders with sufficient opportunity to adjust their shareholdings after shareholder approval has been obtained to a proposed offer or issue of shares so that they can participate in the offer or issue to the desired level. It also facilitates fair and orderly trading in the company's shares in the period after the shareholders meeting. For those reasons, the waiver was declined.

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7.33 Rule 7.33 restricts a company from buying back shares under an on-market buy-back to a price which is not more than 5% above the volume weighted average market price for securities in that class, calculated over the last 5 days on which sales in the shares were recorded before the day on which the purchase under the buy-back was made. This ensures that the buy-back price does not depart significantly from the market price of the company's securities. In this case, the entity had received a takeover offer and asked for a waiver of rule 7.33 to allow it to buy back shares at the higher of the amount permitted under rule 7.33 and any increased offer price offered in the takeover offer. ASX was not satisfied that the entity had demonstrated sufficiently compelling reasons to grant the waiver and so it was declined.

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9.1(b) The applicant was applying for admission to the official list. In advance of listing, it had acquired a company owning various tenements from a vendor entity in exchange for an issue of shares. It agreed with the vendor entity for the shares to be distributed in-specie to the shareholders of the vendor entity. It applied on behalf of the shareholders of the vendor entity for a waiver of the escrow requirements in chapter 9 of the listing rules to allow escrow relief on a 'look through' basis, as contemplated in section 10.6 of Guidance Note 11. The waiver was declined because it was outside the boundaries for such relief set out in section 10.6.

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9.6 Shareholders of the entity wanted to transfer restricted securities to another party and sought a waiver of rule 9.6 to permit this to occur. The transfer would have led to a change in the beneficial ownership of the securities. This was inconsistent with the underlying policy of ASX's escrow requirements and therefore the waiver was refused.

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ASX LR	Reason for declining waiver
10.1	The entity proposed to grant security over its interest in a joint venture (JV) under a deed of cross security in favour of its JV partner, who was a substantial (10%+) holder of the entity. The JV interest constituted a substantial asset of the entity, as defined in rule 10.2. The grant of the security therefore involved a disposal of a substantial asset by the entity to a related party and required shareholder approval under rule 10.1. If the entity defaulted on its obligations, the JV partner was not precluded from enforcing the security to acquire the entity's JV interest. Hence, as presently drafted, the security arrangements did meet the conditions out in section 6.7 of Guidance Note 24 for ASX to consider granting a waiver to allow the acquisition of the security interest without security holder approval. The entity requested a waiver of rule 10.1 to permit it to enter into the deed of cross security without shareholder approval, alternatively, in its current form or with a provision added to preclude the JV partner from enforcing the deed to acquire the JV interest so as to meet the conditions for relief in section 6.7. The joint venture partner held just over 50% of the ordinary shares in the entity and was represented by a majority of the directors on its board. Given its substantial influence over the entity, ASX considered it appropriate that the grant of security be approved by minority shareholders under rule 10.1 and the waiver was therefore declined.
14.7	The entity was unable to issue deferred consideration shares in connection with an acquisition by the date specified in the notice of meeting approving the issue of the shares. The delay was attributed to the effects of COVID-19. The entity sought a waiver of rule 14.7 to permit the shares to be issued at a later date than the date indicated in the notice of meeting seeking shareholder approval. Notwithstanding that the reason for the delay was outside of the entity's control and the additional time requested by the entity was not considered excessive in the circumstances, the waiver was declined. The entity's circumstances had changed materially in the intervening period and the entity's share price was now more than 10 times greater than it was at the time shareholder approval had originally been given, resulting in the deferred consideration shares having a much higher value than when shareholders approved their issue. It was therefore appropriate for the transaction to be re-submitted to shareholders, as required under the listing rules. The waiver was therefore declined.

## Enforcement letters

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

Type	Number of letters
Price query <sup>4</sup>	44
Aware <sup>5</sup>	18
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



## 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
03/21	<p>Published on 30 April 2021 covering:</p> <ul style="list-style-type: none"><li>• Issuer readiness for CHES replacement.</li><li>• Online versions of Appendices 2A and 3B now being available in ASX Online to preview.</li><li>• The release of ASX's consultation paper '<i>Proposed changes to the oil and gas reporting requirements in the ASX Listing Rules</i>'.</li><li>• Listing fee changes effective from 1 July 2021.</li></ul>
04/21	<p>Published on 27 May 2021 covering:</p> <ul style="list-style-type: none"><li>• Changes to the Listing Rules and various online forms due to come into effect on 5 June 2021.</li><li>• The availability of training materials in relation to those changes.</li><li>• Proposed changes to Guidance Notes 8, 14, 20 and 30 also due to come into effect on 5 June 2021.</li><li>• The amendment of ASX's class waiver giving effect to ASIC's COVID-related extension of financial reporting deadlines to apply to listed entities with balance dates between 23 June and 7 July 2021.</li></ul>
05/21	<p>Published on 2 June 2021 covering:</p> <ul style="list-style-type: none"><li>• Confirmation that ASX had received the necessary regulatory approvals for the listing rule and online form changes due to come into effect on 5 June 2021.</li><li>• The availability of the ASX Online Companies website and associated training environment while the new forms were being installed</li><li>• The transitional arrangements for the new forms.</li><li>• Training and other support available for the online forms.</li></ul>

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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.