

**ASX Listings Compliance  
Activities Report**

**1 January 2021 – 31 March 2021**



# ASX Listings Compliance Activities Report

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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 27 entities to the ASX official list and reinstated 3 entities to quotation following the completion of a backdoor listing. ASX rejected<sup>3</sup> 2 applications seeking admission to the ASX official list and 2 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 entity's operational viability and the large proportion of business linked to a single entity controlled by the entity's proposed CEO.
Entity B	ASX had concerns about the early stage of the entity's business, the level of funds it would have to implement its proposed plans, the composition of the entity's board (which did not include anyone with relevant ASX experience) and the interests of related parties or shareholders in its contracts.
Entity C	ASX had concerns about the lead manager chosen to advise on the float, the fact that the adviser fees disclosed in the entity's prospectus were substantially higher than what had been disclosed to ASX, and the fact that an individual adviser involved in the transaction had pleaded guilty to a charge of market manipulation.
Entity D	ASX had concerns about an ongoing strategic partnership between the entity and an individual who had been involved as a director of another entity in related party transactions where there was evidence of false accounting and falsification of invoices.

## Waiver applications

During the period of this report, ASX granted 93 waivers of the listing rules. It declined the following 9 waivers for the following reasons:

ASX listing rule	Reasons for declining waiver
6.23.3	The entity requested a waiver to cancel existing options and replace them with new options, on amended terms, which would effectively change the performance milestones, reduce the exercise price and increase the period for exercise. Listing rule 6.23.3 stipulates that changes to option terms which have the effect of reducing the exercise price, increasing the exercise period or increasing the number of securities received on exercise are prohibited. The waiver was declined.
7.3.4 3 separate waivers	<p>In the first case, the entity proposed to issue loan notes. The entity also proposed that at a subsequent meeting of shareholders, it would seek shareholder approval to amend the terms of the notes to make them convertible to shares and to have the conversion approved under and for the purposes of listing rule 7.1. Listing rule 7.3.4 requires the date by which the entity will issue the shares to be no later than 3 months after the date of the meeting granting the listing rule 7.1 approval. The entity sought a waiver of this requirement. As discussed in section 7.2 of Guidance Note 21, there must be a clear and compelling commercial reason for the issue of shares to occur outside of the required 3 month period. No such reason had been put forward in this case and, accordingly, the waiver was declined.</p> <p>In the second case, the entity proposed to seek shareholder approval for the issue of shares as part of an executive's remuneration package. Again, there was no clear and compelling commercial reason for the issue of shares to occur outside of the required</p>

<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.

	<p>3 month period. Accordingly, the waiver was declined as being inconsistent with section 7.2 of Guidance Note 21.</p> <p>In the third case, the entity intended to enter into a subscription deed providing for the subscription amount to be paid in cash and by an issue of fully paid ordinary shares. The fully paid ordinary shares were due to be issued six months after the execution of the subscription deed. The entity proposed to seek shareholder approval for the issue of the shares under listing rule 7.1. The number of shares to be issued under the subscription deed was not fixed and therefore the maximum potential dilution was unknown. There was also no compelling commercial reason for the transaction to be structured in this way. Accordingly, the waiver was declined as being inconsistent with section 7.2 of Guidance Note 21.</p>
9.1(a)	<p>The entity sought a waiver not to include in its constitution the required provisions for restricted securities set out in listing rule 15.12. The provisions are intended to ensure that a listed entity with restricted securities on issue has the power to take steps to prevent the transfer of restricted securities during the escrow period, and to ensure that if the escrow restrictions are breached, the holder of those securities does not receive any dividends or distributions and cannot exercise voting rights on the securities in question. The waiver was declined as being inconsistent with ASX's escrow regime.</p>
10.11	<p>The trust sought a waiver to allow it to issue units to an entity related to the responsible entity of the trust without obtaining unitholder approval under listing rule 10.11. Given the relationship between the parties, the possibility of the related entity being able to exercise influence over the responsible entity of trust could not be ruled out. The waiver was declined.</p>
10.13.5	<p>The entity proposed to issue loan notes to a related party. The entity also proposed that at a subsequent meeting of shareholders, it would seek shareholder approval to amend the terms of the notes to make them convertible to shares and to have the conversion approved under and for the purposes of listing rule 10.11. Listing rule 10.13.5 requires the date by which the entity will issue the shares to be no later than one month after the date of the meeting granting the listing rule 10.11 approval. The entity sought a waiver of this requirement. As discussed in section 5.2 of Guidance Note 25, there must be a clear and compelling commercial reason for the issue of shares to occur outside of the required one month period. No such reason had been put forward in this case and, accordingly, the waiver was declined.</p>
14.7 2 separate waivers	<p>Listing rule 10.13.5 requires a notice of meeting with a resolution to approve the issue of equity securities under listing rule 10.11 to state that the securities will be issued within one month of the date of the shareholders' meeting. Listing rule 14.7 requires an entity that includes such a statement in a notice of meeting to comply with the statement.</p> <p>In both cases, the entities failed to issue securities within one month of the date of the shareholders' meeting. The entities separately cited several factors for this, including a shortage of time and resources to complete all the requisite steps to issue the securities within one month, public holidays, COVID restrictions, a director's difficulties with transferring funds, and difficulties in confirming share placement details with the share registry. These excuses were not considered sufficient to waive the requirement in listing rule 14.7. Accordingly, waivers were 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>	146
Aware letter <sup>5</sup>	27
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 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
01/21	Published on 26 February 2021 covering: <ul style="list-style-type: none"> <li>a change of fax number for announcements lodged by fax from overseas; and</li> <li>a reminder of upcoming deadlines for lodging periodic reports.</li> </ul>
02/21	Published on 31 March 2021 covering: <ul style="list-style-type: none"> <li>the release of ASX's response to submissions on its consultation paper '<i>Proposed Listing Rules changes: online forms, notification of security issues and corporate action timetables</i>';</li> <li>the release of an updated version of Guidance Note 19 <i>Performance Securities</i>;</li> <li>the release of additional online forms available for preview in new ASX Online for Companies training environment; and</li> <li>the deferral until 1 July 2022 of the requirement for persons newly appointed as being responsible for communication with ASX on listing rule matters to have completed an approved listing rule compliance course and to have attained a satisfactory pass mark in the examination for that course.</li> </ul>

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<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.