



ASX Listings Compliance Activities Report

1 January 2022 - 31 March 2022

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 basis² high level reasons why it has indicated an intention to decline certain listing applications³ 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 28 entities to the ASX official list and quoted their securities and reinstated 2 entities to quotation following a backdoor listing. ASX indicated an intention to decline 5 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 nature of the entity's products, in particular noting the lead times to take the products to Phase 1 and 2 studies.

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.

³ 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 02	The entity's proposed use of funds did not appear to represent realistic commitments given the early stage nature and level of the entity's operations. ASX was also concerned about the apparent or actual conflicts of interests between the entity and its advisers, noting in particular that an employee of the proposed lead manager was also on the entity's Board and that an employee of the proposed legal adviser was also the company secretary of the entity.
Entity 03	ASX had concerns that the entity would only have a minority interest in its two primary projects at the proposed date of listing, the entity was not the operator of the projects and there was no plan to increase the entity's interest in the projects to a controlling interest.
Entity 04	ASX had concerns about the early stage of commercialisation of the entity's product and the limited revenues of the entity to date. Additionally, the entity had not secured the required approvals for its proposed manufacturing facilities in China which were required for the entity to fulfil purchase orders.
Entity 05	ASX was concerned that the applications for mineral concessions that the entity was proposing to enter into option agreements to acquire were at the application stage and had not been granted.
Entity 06	ASX had concerns about the early stage of the entity's business operations noting that a feasibility study was yet to be completed, that the entity was yet to execute key agreements, or obtain key permits and approvals, which were crucial to the commercialisation of the venture. ASX also had concerns about a promoter of the entity retaining a 50% interest in an operating subsidiary of the entity.
Entity 07	ASX had concerns about the early stage nature of the entity's business operations, its unproven business model and the entity's minimal operating and financial history

Waiver applications

During the period of this report, ASX granted 67 waivers and declined 10 waivers of the listing rules. ASX's reasons for declining those waivers are summarised in the table below.

ASX LR	Reason for declining waiver
4.3B 2 separate waivers	The securities of the relevant entities would be suspended from quotation at the time when their preliminary final reports were due (one entity was in voluntary administration and the other entity was in the process of being acquired by way of a scheme of arrangement). The entities were not practically disadvantaged by the waivers not being granted.
4.5.1	The entity's securities were suspended from quotation following entry into voluntary administration. Quotation of the entity's securities was likely to remain suspended on the date that the financial information required by Listing Rule 4.5.1 was due and therefore the entity would not be practically disadvantaged by the waiver not being granted.
4.7B	The entity's securities were suspended from quotation following entry into voluntary administration. Quotation of the entity's securities was likely to remain suspended when the Appendix 4C (quarterly cash flow report) was due and therefore the entity would not be practically disadvantaged by the waiver not being granted.
4.7.1	The entity's securities were suspended from quotation following entry into voluntary administration. Quotation of the entity's securities was likely to remain suspended on the date that the financial information required by Listing Rule 4.7.1 was due and therefore the entity would not be practically disadvantaged by the waiver not being granted.

ASX LR	Reason for declining waiver
7.1	The entity was incorporated in the United States and would be listed on both ASX and NASDAQ. The majority of the entity's securities were initially expected to trade on ASX in the form of CDIs. The entity did not satisfy ASX that a waiver should be granted having regard to the considerations outlined in Guidance Note 4 – Foreign Entities Listing on ASX.
7.3.4	Subject to shareholder approval, the entity was proposing to issue shares as part consideration for the acquisition of the issued capital in another entity ('Acquisition'), up to 31 months after the date of the meeting convened for approval of the Acquisition. The shares were intended to be issued upon the achievement of certain milestone hurdles linked to the financial achievements of the entity being acquired ('Deferred Consideration Shares'). The number of Deferred Consideration Shares to be issued was based on a formula that was dependent of the entity's share price and the exchange rate at a future date. The formula did not deliver a fixed outcome so that investors could readily understand, and have reasonable certainty as to, the impact on the entity's capital structure if the milestone was achieved. The waiver was not granted on the basis that the maximum number of Deferred Consideration Shares to be issued, and the potential dilution, would not be known at the time of voting on the resolution and there would not be an adequate degree of certainty so that shareholders may give their informed consent to the issue of the Deferred Consideration Shares.
7.5.4	The entity had agreed to issue shares to an investor over a period of eighteen (18) months by way of a placement. At the time of the waiver application, 81% of the placement shares remained to be issued (the 'Final Tranche Shares'). The entity was proposing to seek shareholder approval for the agreement to issue the Final Tranche Shares so that the entity's placement capacity would be the same as if the Final Tranche Shares had been issued with shareholder approval. The maximum number of Final Tranche Shares to be issued was not known at the time of application, and would not be contained in the entity's notice of meeting ('Notice'). However, worked examples of the estimated potential dilution would be included in the Notice. The waiver, if granted, would effectively provide the entity with the on-going ability to issue the Final Tranche Shares at any time. The waiver was not granted.
10.1	Listing rule 10.1 requires an entity to obtain shareholder approval for an acquisition or disposal of a substantial asset from or to a related party (i.e. 10.1.1). The proposed transaction was caught by listing rule 10.1.1 in that a substantial asset was being disposed of by the entity to a counterparty that had the same responsible entity. Given it could not be ruled out that the transaction may involve a shift in value and the rationale for not obtaining security holder approval was not compelling, it was proposed not to grant a waiver from Listing Rule 10.1.
10.13.5	Subject to shareholder approval, the entity was proposing to issue shares as part consideration for the acquisition of the issued capital in another entity ('Acquisition'), up to 31 months after the date of the meeting convened for approval of the Acquisition. The shares were intended to be issued upon the achievement of certain milestone hurdles linked to the financial achievements of the entity being acquired ('Deferred Consideration Shares'). The number of Deferred Consideration Shares to be issued was based on a formula that was dependent of the entity's share price and the exchange rate at a future date. The formula did not deliver a fixed outcome so that investors could readily understand, and have reasonable certainty as to, the impact on the entity's capital structure if the milestone is achieved. The waiver was not granted on the basis that the maximum number of Deferred Consideration Shares to be issued, and the potential dilution, would not be known at the time of voting on the resolution and there would not be an adequate degree of certainty so that shareholders may give their informed consent to the issue of the Deferred Consideration Shares.

Enforcement letters

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

Type	Number of letters
Price query ⁴	63
Aware ⁵	17
Show cause ⁶	0
ASIC referral ⁷	1

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
01/22	Published on 8 February 2022 covering: <ul style="list-style-type: none"> ASX's consultation paper on Corporate Collective Investment Vehicles ('CCIVs'); and the order to release half yearly, preliminary final and change of balance date announcements.
02/22	Published on 17 March 2022 covering: <ul style="list-style-type: none"> Task Force on Climate-related Financial Disclosures reporting framework training; the new fee model for ASX Issuer Services; and the open hours of ASX Market Announcements Office during Daylight Savings.

⁴ 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*.

⁵ 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*.

⁶ 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.

⁷ 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.