



# ASX Listings Compliance Activities Report

1 July 2022 - 30 September 2022

## 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 15 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 8 applications seeking admission to the ASX official list 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 operations noting the recent decline in revenue following the discontinuation of various brands within the group, and the lack of sufficient operating and financial history in relation to the primary brand that will form the main focus of the Company's operations after listing.

<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 02	ASX had concerns about the early stage of the entity's business operations noting that it held no significant asset other than cash and that the patent for its technology and licence agreement was yet to be granted.
Entity 03	ASX had concerns relating to the entity's solvency and the adequacy of its working capital, lack of audited financial statements and the adequacy of the due diligence carried out. ASX also had concerns about the capacity of a major shareholder (who had been convicted of insider trading) to exert significant influence over the company and its board.
Entity 04	ASX had concerns regarding the early stage nature of the business as evidenced by the absence of any commercial application of its technology and vague business plans.
Entity 05	ASX had a number of concerns including that the proposed capital structure and accounts provided in relation to the proposed underlying business were not representative of the business. ASX also had concerns that the jurisdictions where the entity was incorporated, held its licence to operate and expected to derive the majority of its revenue were all considered by ASX to be jurisdictions with a low level of required regulatory disclosure, and a material portion of the business would be completed through cryptocurrency transactions.
Entity 06	ASX had concerns regarding the proposed partial ownership structure, significant cash payments made for assets acquired in connection with the listing that may need to be unwound for escrow purposes, and entities in the group structure being domiciled in an emerging market.
Entity 07	ASX had concerns regarding the early stage nature of the business and unproven business model. The business's revenues mostly comprised government grants and it had not demonstrated that its business model would be capable of deriving material revenues from the commercial application of its technology.
Entity 08	ASX had concerns about the early stage nature of the business and its ability to execute its business plans.

## Waiver applications

During the period of this report, ASX granted 59 waivers and declined 14 waivers of the listing rules. ASX's reasons for declining those waivers are summarised in the table below.

ASX LR	Reason for not granting waiver
1.1 condition 6 and 2.4	The entity applying for the waiver was an Australian incorporated entity listed on the AIM market of the London Stock Exchange. All its shares were able to be traded in Australia. There was no basis for granting a waiver from the requirement to apply for quotation of all securities in its main class of securities.
5.3 and 5.5	<p>As set out in Guidance Note 4, ASX may, in very limited circumstances, recognise compliance by a foreign entity which has its primary listing on an overseas exchange with a particular obligation imposed by its home exchange as constituting, in principle, sufficient reason to justify the granting of a waiver from a comparable, but inconsistent, obligation under the listing rules. Such a waiver has historically been granted sparingly and the onus is on the applicant to show good cause why it should be granted such a waiver. All applications for such a waiver are considered on their merits on a case by case basis. A non-exhaustive list of matters ASX will be guided by in considering such an application is set out in paragraph 3.4 of Guidance Note 4.</p> <p>The entity was incorporated under the laws of Australia. The entity requested a waiver from having to lodge quarterly activities and cash flows reports altogether, for quarters 2 and 4 each year. In</p>

	the limited situations where waivers of listing rule 5.3 and 5.5 are granted on the basis of compliance with the rules of a home exchange, they are not granted to relieve an entity of quarterly reporting requirements altogether but instead to align to the quarterly reporting regime of the relevant overseas exchange.
6.22	No submissions were received in support of this waiver.
6.23.4	No submissions were received in support of this waiver.
7.25	The entity's shares had traded as low as \$0.066 per share and as high as \$0.086 per share over the past 6 months. The entity proposed a 2 for 5 bonus issue of fully paid ordinary shares to existing shareholders. It was likely that the bonus issue would decrease the entity's share price below its current level which was already less than 20 cents. The waiver was not granted.
7.3.4  2 separate waivers	<p>In the first case, the number of shares to be issued was to be calculated by reference to a future share price without a floor price, meaning that the maximum number of shares was not known. The performance milestones attaching to the shares were not subject to independent verification (and so were not consistent with Guidance Note 19 sections 10 and 11). It was not appropriate to grant the waiver in all the circumstances.</p> <p>In the second case, the entity was proposing to issue a number of convertible notes in equal instalments over the 7 months following its Annual General Meeting. The timing of the issue of the convertible notes did not appear to be necessitated or justified by the terms of a specific commercial transaction or tied to a certain performance milestone or performance hurdle, but simply to provide the entity with working capital over a period of 7 months. The requested waiver was not granted.</p>
9.1	A parent entity retained shares in a former child entity that was spun out and admitted to the official list. The retained shares were subject to ASX-imposed mandatory escrow for a period of 24 months. The parent entity subsequently came into severe financial difficulties and the former child entity sought a waiver of listing rule 9.1 so that the parent entity could dispose of the retained shares before the expiry of the escrow period. The waiver was not granted.
10.1	ListCo was proposing to acquire a target via a scheme of arrangement. A director of ListCo was also a director and substantial holder of the target. The director's holding in the target was larger in percentage and value than the director's holding in ListCo, and exceeded 5% of the equity interests in ListCo. In the limited circumstances where a waiver from listing rule 10.1 might be granted, it must be clear that there is no reasonable possibility of value shifting. It could not be assumed there was no economic rationale for the director to exert influence for the purpose of transferring value from ListCo to the target. In the circumstances, a waiver was not appropriate.
10.11 and 10.14	The entity was an Australian incorporated entity with a listing on the AIM market of the London Stock Exchange. The entity was required to comply with the provisions of the Corporation Act 2001 (Cth) and a waiver would be inconsistent with the policy of listing rules 10.11 and 10.14 notwithstanding the entity's listing on AIM.
14.7	An entity sought a waiver from listing rule 14.7 in order to issue securities later than the date stated in the notice of meeting. The reason for the delay in issuing the securities had not been adequately accounted for by the entity in its waiver application (which cited 'administrative oversight'). The waiver was not granted on the basis that ASX was not satisfied that the entity had demonstrated any reason to justify ASX granting the waiver.

## Enforcement letters

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

Type	Number of letters
Price query <sup>4</sup>	53
Aware <sup>5</sup>	27
Show cause <sup>6</sup>	1
ASIC referral <sup>7</sup>	6

## 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
06/22	Published on 7 July 2022 covering: <ul style="list-style-type: none"> <li>Changes to oil and gas reporting requirements effective 1 July 2022;</li> <li>Reports on corporate governance disclosures by listed entities; and</li> <li>The new pricing model for Issuer Services.</li> </ul>
07/22	Published on 16 August 2022 covering: <ul style="list-style-type: none"> <li>A reminder on the order of half yearly, preliminary final and change of balance date announcements and the early release of announcements during reporting periods;</li> <li>A reminder to allow enough time for ASX to review draft notices of AGM;</li> <li>A reminder of the FY2023 annual listing fees;</li> <li>The response to Public Consultation on Tranche 3 of the operating rule amendments required for CHES Replacement and the Combined Rules Package; and</li> <li>Upcoming deadlines for periodic reports.</li> </ul>
08/22	Published on 16 September 2022 covering:

<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.

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- Timetable implications of the National Day of Mourning and public holiday on 22 September 2022;
  - A reminder to update nominated ASX contacts on ASX Online;
  - The ASX Listing Rules Compliance Course;
  - Emails circulating regarding membership or maintenance of an entity's ISIN; and
  - A reminder that the ASX Market Announcement Office closes one hour later during daylight savings.
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