



ASX Listings Compliance Activities Report

1 October 2022 - 31 December 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 17 entities to the ASX official list and quoted their securities and reinstated 3 entities to quotation following a backdoor listing. ASX refused or indicated that it would be likely to refuse 2 applications for the reasons summarised in the table below.

The table below includes, as applicable:

- A. applications for admission that ASX has refused;
- B. applications for admission that ASX has indicated an intention to refuse;
- C. 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 refuse the entity's application for readmission in due course; and
- D. requests for in-principle advice on the suitability of an entity for listing where ASX has indicated that it is likely to refuse the entity's application for admission if the entity proceeds to make a formal application.

Refusal type	Summary of reasons
D	ASX had concerns regarding the entity's proposal to hold only a 50% interest in its main asset, with the remaining 50% being held by interests associated with the entity's board and management. ASX also had concerns with the quality and completeness of the information provided in support of the application for in-principle advice, amongst other things.

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.

Refusal type	Summary of reasons
D	ASX had concerns regarding the entity's limited operating and financial history and the limited revenue that it had generated to date in light of the entity's stated business model as a software and technology company.

Waiver applications

During the period of this report, ASX granted 129 waivers and declined 6 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
6.24	The entity sought a waiver from the requirement to send a notice to optionholders about the upcoming expiry of their options. The market price of the entity's shares at the time when the waiver was sought was 72% below the exercise price of the options and the highest market price at which the entity's shares had traded on ASX in the last six months was greater than 75% of the exercise price of the options, bringing it outside of the trading price parameters set out in Clause 5.3 of Appendix 6A. There was no sufficient reason for granting the waiver.
7.3.4 (2 separate waivers)	<p>In the first case, the entity intended to seek shareholder approval at a general meeting to issue securities in connection with an IPO on a US securities exchange as well as in connection with capital raisings prior to or after the IPO within nine months following the general meeting. The manner and timing of the US IPO proposal and potential non-IPO capital raisings were not sufficiently progressed to inform a waiver decision for an extension of the length of time sought. The longer the period of any extension, the greater the potential there is for material changes to the entity's circumstances over the requested timeframe.</p> <p>In the second case, the entity proposed to seek shareholder approval at its upcoming general meeting for the proposed issue of shares on conversion of notes issued to a counterparty. The terms of the notes permitted conversion to occur at any point prior to 31 December 2023. As stated in section 7.2 of Guidance Note 21, ASX will generally only grant a waiver from the 3 month requirement where there is 'a clear and compelling commercial reason for the issue to be made at a later date'. As there was no such reason, the waiver was not granted.</p>
7.3.9	<p>The entity was conducting a share purchase plan involving an issue of free attaching options which did not fall within the ASIC Corporations (Share and Interest Purchase Plans) Instrument 2019/547 and was not covered by Listing Rule 7.2 exception 5. The entity was proposing to seek, at its annual general meeting, shareholder approval for the issue of the options for the purposes of Listing Rule 7.1. The entity sought a waiver from the requirement to include a voting exclusion in its notice of meeting.</p> <p>As the shares had been issued under the share purchase plan, the identities of the shareholders who participated in the share purchase plan were known. Listing Rule 14.11.1 stipulates that a person who is expected to participate in, or who will obtain a material benefit as a result of, the proposed issue (except a benefit solely by reason of being a holder of ordinary securities in the entity), must be excluded from voting in favour of a Listing Rule 7.1 resolution. As the shareholders whose votes were to be disregarded could be readily and fairly determined, the waiver was not granted.</p>
10.11	The entity was conducting a share purchase plan involving an issue of free attaching options which did not fall within the ASIC Corporations (Share and Interest Purchase Plans) Instrument 2019/547 and was not covered by Listing Rule 7.2 exception 5 or Listing Rule 10.12 exception 4. The entity sought a waiver from Listing Rule 7.3.9 and made a concurrent application for a waiver of Listing

Rule 10.11. The waiver from Listing Rule 7.3.9 was not granted and there was no rationale for granting the 10.11 waiver.

10.13.5	<p>The entity proposed to seek security holder approval at its annual general meeting for the issue of options to directors in relation to participation in a placement. The options were in a class that would be quoted. In order for the entity to be able to lodge a cleansing notice under section 708A(5) of the Corporations Act (Cth) rather than a prospectus under section 713 of the Corporations Act (Cth), the options would need to be issued more than one month after the date of the AGM.</p> <p>ASX has been prepared to consider granting waivers from Listing Rule 10.13.5 where the reason for having to delay the issue of securities is outside of the entity's control. The entity's rationale for requesting a waiver of Listing Rule 10.13.5 was primarily based on financial considerations associated with the cost of preparing a prospectus under section 713 of the Corporations Act (Cth), which is an inadequate reason to grant a waiver. Additionally, the proposed date of the annual general meeting was largely within the control of the entity. Accordingly, a sufficiently compelling case had not been made out to justify the granting of the waiver.</p>
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Enforcement letters

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

Type	Number of letters
Price query ⁴	39
Aware ⁵	21
Show cause ⁶	0
ASIC referral ⁷	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](#).

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.



During the period of this report, ASX released the following Listed@ASX Compliance Updates:

Update	Summary
09/22	Published on 3 November 2022 covering: <ul style="list-style-type: none"><li data-bbox="309 472 948 499">• The 2023 Market Announcements Reporting Calendar;<li data-bbox="309 512 1331 573">• A reminder about related party transactions and funding disclosures in quarterly cash flow reports;<li data-bbox="309 586 1070 613">• Automatic suspension for failing to lodge periodic reports on time;<li data-bbox="309 627 1086 654">• The inappropriate use of the Market Announcements Platform; and<li data-bbox="309 667 1075 694">• An update on the Omnibus Rule Amendment consultation process.
10/22	Published on 20 December 2022 covering: <ul style="list-style-type: none"><li data-bbox="309 757 751 784">• Upcoming periodic report deadlines;<li data-bbox="309 797 1267 824">• A reminder about automatic suspension for failing to lodge periodic reports on time;<li data-bbox="309 837 1331 898">• Entities with an ASX Foreign Exempt Listing that go into a halt or suspension on their home exchange; and<li data-bbox="309 911 836 938">• ATO Guidance on GST in the context of IPOs.
