



# ASX Listings Compliance Activities Report

**1 January 2023 - 31 March 2023**

## 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 refused or indicated an intention to refuse 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 9 entities to the ASX official list and quoted their securities and reinstated 1 entity to quotation following a backdoor listing. ASX refused or indicated that it would be likely to refuse 4 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 relating to the early stage nature of the entity's operations, and in particular that phase 1 trials in its lead product had not commenced and that the remaining 5 product platforms were all at the pre-clinical stage of development.

<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.

Refusal type	Summary of reasons
D	ASX had concerns about directors holding an interest in the entity's operating subsidiary after listing. The operating subsidiary held minority interests in assets which were in an emerging market. Additionally ASX had concerns relating to the entity's ability to satisfy the commitments test in listing rule 1.3.2.
D	ASX had concerns regarding the early stage nature of the business and the entity's unproven business model. Additionally ASX was concerned that the entity had not demonstrated that customer contracts were in place through which revenue would be generated. The entity's main undertaking was the mining and sale of a cryptocurrency.
B	ASX had concerns about the quality of information provided by the entity in connection with its listing application and a number of unresolved questions in relation to that information.

## Waiver applications

During the period of this report, ASX granted 44 waivers and declined 14 waivers of the listing rules. ASX's reasons for declining those waivers are summarised in the table below.

Rule Number	Reason for not granting waiver
6.23.3	ASX had previously provided confirmation to the entity that its performance rights with a nil exercise price were appropriate and equitable for the purposes of listing rule 6.1. This confirmation was provided at the time of the entity's re-compliance listing, on the basis that the nominated achievement date for the performance milestones would be disclosed in the re-compliance prospectus. After the entity's securities had been reinstated to quotation, the entity sought a waiver from listing rule 6.23.3 to enable it to vary the terms of the performance rights by amending the date for achievement of the milestones in a way that would provide the holders of the rights a second chance to meet the milestones. Granting a waiver would run counter to the policy rationale for requiring the nominated date for achieving the milestones to be disclosed in the prospectus.
7.3.4  8 separate waivers	<p>ASX refused to grant two separate waivers in relation to complicated funding arrangements where the timing of the issue of the securities was subject to a drawdown trigger that was in the entity's control. In each case, there was no clear and compelling reason why the entity could not structure the arrangements in a way that did not require a waiver.</p> <p>ASX also declined to grant three separate waivers in relation to the issue of deferred consideration securities that were subject to time based conditions rather than performance milestones linked to the acquired asset. The waivers were not granted on the basis that there was no compelling reason why the shares could not be issued within the timeframe contemplated by the rule.</p> <p>In another case, the entity sought a waiver in relation to options to be issued to the entity's corporate adviser as consideration for the services provided by the corporate adviser. The options were subject to performance milestones that were linked to the entity's share price and potentially provided the corporate adviser with an incentive to ramp the entity's share price. ASX did not consider it appropriate to grant a waiver to facilitate the issue of options to a corporate adviser in these circumstances.</p> <p>ASX refused to grant a waiver in connection with an entity's proposal to IPO on a US securities exchange. The entity's plans were not sufficiently advanced to provide a proper basis for granting a waiver.</p> <p>ASX also refused to grant a waiver in connection with the issue of shares to a liquidator pursuant to a deed of company arrangement where the purpose of the issue was to 'top up' the liquidator for</p>

any downward deviation from an agreed issue price. The waiver was not granted as the reason for the delay in the issue of the securities was to align the timing of the issue with the expiry of the escrow period that would have applied to the shares if they were issued at an earlier date. This was not considered to be a compelling reason for granting the waiver.

9.1(d) and 9.1(e)	ASX refused to grant a waiver to permit a corporation that held escrowed shares in a listed entity from transferring the escrowed shares to the corporation's shareholders during the escrow period. The proposed transfer of the beneficial interest in the shares was considered to be inconsistent with the policy underlying the escrow regime.
10.11	The entity proposed to seek shareholder approval under listing rule 7.1 for the issue of shares under a securities purchase plan ('SPP'). The proposed issue did not fall within the terms of the standard SPP waiver set out in Guidance Note 17. There was no compelling reason to waive listing rule 10.11 in circumstances where the standard waiver was not available.
14.7  2 separate waivers	On two occasions, ASX refused to grant a waiver to permit an entity to issue shares more than three months after it had obtained shareholder approval under listing rule 7.1. In both cases, the entity had not been able to demonstrate that its failure to issue the shares in the relevant period was outside of its control. In the second case, the entity had also failed to explain the conditionality of the proposed issue in its notice of meeting.

## Enforcement letters

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

Type	Number of letters
Price query <sup>4</sup>	51
Aware <sup>5</sup>	30
Show cause <sup>6</sup>	0
ASIC referral <sup>7</sup>	5

## Censures

During the period, ASX censured Creso Pharma Limited (ASX:CPH) for breach of Listing Rule 10.11. The censure notice was published on the market announcements platform on 13 March 2023 and can be accessed [here](#).

<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.



## Listed@ASX compliance updates

Listed@ASX Compliance Updates are free email alerts sent to subscribers 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
01/23	Published on 12 January 2023 covering: <ul style="list-style-type: none"><li>• A reminder regarding automatic suspension for failing to lodge periodic reports by the due date.</li></ul>
02/23	Published on 20 February 2023 covering: <ul style="list-style-type: none"><li>• A reminder regarding automatic suspension for failing to lodge periodic reports by the due date;</li><li>• The order to release half year, preliminary final and change of balance date announcements;</li><li>• Australian legal requirements in relation to board composition;</li><li>• Chapter 5 – Resource Reporting; and</li><li>• The Listed@ASX Magazine becoming fully digital.</li></ul>
03/23	Published on 22 March 2023 covering: <ul style="list-style-type: none"><li>• Updated Information Forms and Checklists;</li><li>• A reminder regarding automatic suspension for failing to lodge periodic reports by the due date;</li><li>• ASX Market Announcements Office closing one hour earlier from the end of Daylight Savings Time.</li></ul>

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