



# ASX Listings Compliance Activities Report

**1 April 2023 - 30 June 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 7 entities to the ASX official list and quoted their securities and reinstated 2 entities to quotation following a backdoor listing. ASX refused or indicated that it would be likely to refuse 5 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.

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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.

<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 the early stage nature of the business. Its production facility was not yet constructed and commercial production had not commenced, machinery was yet to be delivered or installed, and revenue to date was solely derived from the provision of corporate business services to former group companies and the sale of products unrelated to its listing proposition. Further, the entity was operating in an emerging market, no lead manager had been appointed and it did not appear that the entity would meet the commitments test in Listing Rule 1.3.2.
D	ASX had concerns that the entity did not have access rights to its only tenement and that exploration expenditures following admission might be re-allocated to other projects.
D	ASX had concerns about the early stage nature of the business and strategy in relation to renewable energy projects in Mongolia. The entity could not provide evidence of land access arrangements and regulatory approvals. ASX could not verify work carried out to assess the viability of the projects due to the absence of English-translated studies and could not verify the existence of key contracts, approvals and licenses. The entity could not demonstrate a clear business strategy for development of its projects or meaningful on-ground capability or director and key management experience to develop projects in the overseas location.
D	ASX had concerns about the reliability and quality of information received from the entity in the context of its application for in-principle advice. ASX was not satisfied that the entity had the governance arrangements and financial reporting systems in place to satisfy the financial, audit and disclosure requirements of an ASX listed entity. Further, ASX had concerns that the board of directors and senior management did not have the necessary experience or skills to manage and supervise an ASX listed entity.
D	ASX had concerns about a multiplicity of conflicts built into the entity's structure and operations. For example, a third party associated with directors and promoters had a contractual right to acquire a 15% interest in projects acquired by the entity, which would give the directors and promoters a different interest in the business from ordinary shareholders.

There was one refusal that was inadvertently omitted from the Activities Report for the prior quarter. Details are provided below:

Refusal type	Summary of reasons
D	ASX had concerns about the early stage and uncertain nature of a project that was the subject of a proposed backdoor listing. The project did not have completed design works and associated permits, regulatory approvals, offtake contracts, or funding to finance its construction and development. At re-admission, the entity would not have enough working capital or funding to construct the project. There was a material lead time, as well as regulatory, operational and commercial uncertainties which had to be resolved, before the entity expected to earn revenue from the project. The entity would not control the project due to a proposed joint control arrangement. The entity was not proposing to raise capital and was therefore not demonstrating material investor interest in its structure and operations following re-admission.

## Waiver applications

During the period of this report, ASX granted 61 waivers and declined 20 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
5.1, 5.3 and 5.5	The entity was the target of an off-market takeover bid and went into suspension in anticipation of being removed from the official list. It requested to be relieved from the compulsory quarterly reporting mandatory for all mining producing entities. The waiver was not granted on the basis that the entity remained a listed entity at the time the quarterly report was due for lodgement and it continued to carry on mining activities which warranted periodic disclosure notwithstanding being suspended from quotation at the time the report was due.
7.1 2 separate waivers	<p>In the first case, the entity was negotiating an acquisition and intended to raise capital via an underwritten entitlement offer and a placement, in addition to issuing consideration shares to the vendor. The entity had already used its capacity under Listing Rule 7.1 but had the benefit of additional capacity under a Listing Rule 7.1A approval. The entity sought a waiver to enable it to include the number of securities to be issued under the entitlement offer when calculating its total capacity. The waiver was not granted on the basis that it would have the effect of expanding the entity's capacity to provide scrip consideration for the acquisition, undermining the requirement in Listing Rule 7.1A.3 that securities issued under Listing Rule 7.1A.2 must be issued for cash consideration.</p> <p>In the second case, the entity was negotiating an acquisition and intended to fund it through an underwritten entitlement offer and debt facility. The debt facility would involve the issue of warrants at a discount to the price that securities were issued under the entitlement offer. The entity sought a waiver to enable it to include the number of securities to be issued under the entitlement offer when calculating its total capacity. The waiver was not granted because the warrants were a different security issued at a different price to the securities issued under the entitlement offer.</p>
7.3.4 4 separate waivers	<p>In two cases, the entity wished to seek shareholder approval for an agreement to issue convertible securities more than three months after obtaining shareholder approval. The waiver was not granted as no reason was put forward for the delay in issuing the convertible securities other than the entity's convenience.</p> <p>In another case, a waiver was not granted because there was no floor price calculation in the terms of the convertible securities to be issued more than three months after shareholder approval. This raised an unacceptable shareholder dilution risk.</p> <p>In the third case, the entity had entered into an agreement to issue shares as payment for services that had not yet been provided and which would only be provided in the future if the entity required them. The entity had not provided details of the activities to be undertaken, or a breakdown of the costs or timeframes for the services. The waiver was not granted.</p>
7.3.9 2 separate waivers	In both cases, the waiver was not granted because the identities of the shareholders who participated in the issue were known and there was no reason why their votes could not be excluded in accordance with the rule
10.1	We refused to grant a waiver to enable a listed trust to invest more than 5% of its equity interests into another fund with the same responsible entity and investment manager without unitholder approval. The investment had not been contemplated in the trust's listing disclosure document.

10.11 3 separate waivers	In all three cases, the entity was seeking to undertake a capital raising in the form of a security purchase plan involving an issue of options. The share purchase plans did not meet the criteria for the standard waiver outlined in Guidance Note 17. There was no compelling reason to waive the requirement for shareholders to approve the issue of options to related parties pursuant to Listing Rule 10.11.
10.13.5 3 separate waivers	In all three cases, the entity sought a waiver to enable it to issue securities more than one month after approval had been obtained from shareholders. The waivers were sought as a matter of convenience and no compelling rationale was provided to justify the waivers.
14.7 2 separate waivers	<p>In the first case, the entity proposed to issue warrants to a third party. The issue had been approved by shareholders at an annual general meeting under Listing Rule 7.1. The entity sought an extension to issue the warrants more than three months after the annual general meeting. The waiver was not granted since the entity had failed to explain the conditionality of its proposed issue in its notice of meeting and it had not been able to demonstrate that its failure to issue the warrants in the relevant period was outside of its control.</p> <p>In the second case, the entity proposed to issue consideration shares and performance rights ('Consideration Securities') as consideration for an acquisition. The issue had been approved by shareholders at an annual general meeting under Listing Rule 7.1. The entity sought an extension to issue the Consideration Securities more than three months but no later than six months after the annual general meeting to complete further work on the acquisition including a due diligence process. The waiver was not granted since the entity had not been able to demonstrate that its failure to issue the consideration shares in the relevant period was outside of its control.</p>

## Enforcement letters

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

Type	Number of letters
Price query <sup>4</sup>	62
Aware <sup>5</sup>	20
Show cause <sup>6</sup>	0
ASIC referral <sup>7</sup>	5

<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.

## Censures

No entities were censured during the period.

## 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](#).

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

Update	Summary
04/23	<p>Published on 21 April 2023 covering:</p> <ul style="list-style-type: none"><li>• A reminder to mining explorers reporting visual estimates of mineralisation to follow the Best Practice note published by the Australian Institute of Geoscientist (AIG) and ASX Guidance Note 8 - Example D.</li><li>• A reminder that ASX must receive quarterly reports for the quarter ended 31 March 2023 by no later than 7:30pm AEST to avoid automatic suspension.</li></ul>
05/23	<p>Published on 23 May 2023 covering:</p> <ul style="list-style-type: none"><li>• A reminder to entities issuing convertible debt securities that they must be able to demonstrate how the securities comply with the listing rules, particularly if the conversion terms are complex, potentially highly dilutive or have other unusual features. The update explains how to engage with ASX about convertible debt securities that are not market-standard or if any of the features noted in section 5.9 of ASX Guidance Note 21 are present.</li><li>• Changes to ASX annual and subsequent listing fees for FY24.</li></ul>

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