



# ASX Listings Compliance Activities Report

**1 July 2023 - 30 September 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 11 entities to the ASX official list and quoted their securities and reinstated 4 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 entity's limited operating and financial history as a resource producer. The entity had not generated any revenue in the last two years and had not undertaken any significant production runs. The entity did not have any binding agreements in place for supply of feedstock or for the sale of any of its production. The entity's operations were located in an emerging market and it did not have a track record of listing on a peer exchange or management based in Australia or another developed jurisdiction with appropriate experience.
D	ASX had concerns about public disclosures by the entity that did not comply with the JORC Code and the entity's failure to inform ASX about certain information relevant to a director's good fame and character. Further, ASX had concerns about the group structure, which included a number of entities incorporated in a tax haven interposed between the proposed listed entity and proposed operating entity for no apparent reason. The entity also proposed to list on the basis of a single project located in an emerging market.
D	ASX had concerns about the early stage nature of a life science entity's products and unproven business model, noting the long and uncertain timeframe for commercialising any of its products and that the entity had not secured the approvals, licences and contracts necessary to commence clinical trials promptly after listing. Further, ASX had concerns about the entity's limited expenditure on research and development in recent years, the significant amount of fees payable to the lead manager and the quantum and terms of the performance rights issued to directors which would be equivalent to over 60% of the ordinary shares on issue at the time of admission.
A	ASX had unsatisfactory dealings with the entity throughout the admission process. This included the entity providing incomplete information and failing to notify ASX of material new developments. ASX was not satisfied that the entity would comply with the listing rules relating to continuous and periodic disclosure.
D	The entity was an exploration entity which had a minority, non operated interest in its main undertaking. Further, ASX had concerns that the entity would not have sufficient working capital to fund the activities set out in its proposed use of funds schedule. ASX also had concerns that the entity's joint venture party would hold disproportionate decision making power in relation to the joint venture.

## Waiver applications

During the period of this report, ASX granted 112 waivers and declined 15 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	The entity was the target of a scheme of arrangement to have all its issued share capital acquired by a foreign entity. It sought a waiver from compulsory quarterly reporting during the period after the scheme had become effective. The waiver was not granted on the basis that the entity remained listed 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.
6.23.3	In the first and second cases, the entity sought to waive or adjust the milestones applicable to performance rights. ASX had previously confirmed that the performance rights were appropriate and equitable for the purposes of listing rule 6.1, provided the milestones and other terms were

3 separate waivers	<p>disclosed in a prospectus. The proposed change would have the effect of increasing the exercise period of the performance rights as the hurdles could be achieved earlier than would otherwise be the case. Granting a waiver would run counter to the policy rationale for requiring the milestones and the nominated date for achieving the milestones to be disclosed in the prospectus.</p> <p>In the second case, there were also additional rights for which a waiver was denied. The entity proposed to amend the milestones attaching to those rights to make them easier to achieve (and therefore increase the period for exercise). The rights had been issued with approval under listing rule 10.11 and granting a waiver from listing rule 6.23.3 in the circumstances would undermine the original shareholder approval, which had not contemplated an amendment of that nature.</p> <p>In the third case, the entity had sought a waiver to enable it to amend the terms of performance rights that had been issued to directors with approval under listing rule 10.11. The amendment would allow the entity to treat a backdoor listing as a change of control event, resulting in the performance rights automatically vesting without the performance milestones being achieved. The change would have the effect of increasing the exercise period of the performance rights which would otherwise lapse. Granting a waiver from listing rule 6.23.3 in the circumstances would undermine the original shareholder approval obtained under listing rule 10.11, which had been given on the basis that the performance rights would have normal change of control terms.</p>
7.3.4	<p>The entity proposed to seek shareholder approval at its general meeting to issue securities over a period of 21 months to a vendor as consideration for an acquisition subject only to time-based milestones. The waiver was not granted on the basis that there was no compelling commercial reason to issue the securities later than three months after the date of the meeting.</p>
7.3.9 4 separate waivers	<p>In all four cases, the entity was seeking shareholder approval to undertake a capital raising in the form of a share purchase plan and offered one free-attaching option for every two shares subscribed for. The offers were scheduled to close before the date of the meeting. The waiver was not granted because the identities of the shareholders who would participate in the issue were known and there was no reason why their votes could not be excluded in accordance with the rule.</p>
10.11 4 separate waivers	<p>In all four cases, the entity was seeking to undertake a capital raising in the form of a share purchase plan and offered one free-attaching option for every two shares subscribed for. The share purchase plans did not meet the criteria for the standard waiver outlined in Guidance Note 17 and 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 in connection with a complex securities purchase plan.</p>
14.7 2 separate waivers	<p>In the first case, the entity undertook a capital raising in the form of a share placement and offered a free-attaching option for every two shares subscribed for. The issue had been approved by shareholders at a general meeting under listing rule 10.11. The entity sought an extension to issue the securities more than one month after the general meeting. The waiver was not granted since the entity had not been able to demonstrate that its failure to issue the securities in the relevant period was outside of its control.</p> <p>In the second case, the entity had entered into a conditional binding agreement to acquire a tenement. It had obtained approval at a general meeting to issue securities under listing rules 7.1 and 10.11 to raise capital as consideration for the transaction. The entity sought an extension of four months to issue the securities after the general meeting. Even though the entity's inability to issue the shares in the required timeframe was outside of its control, the entity's share price had increased materially since the general meeting and the waiver was refused on the basis that the Company's circumstances had changed materially since shareholder approval was obtained.</p>

## Enforcement letters

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

Type	Number of letters
Price query <sup>4</sup>	44
Aware <sup>5</sup>	30
Show cause <sup>6</sup>	1
ASIC referral <sup>7</sup>	12

## Censures

No censures for the quarter.

## 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
06/23	<p>Published on 16 August 2023 covering:</p> <ul style="list-style-type: none"> <li>• A reminder about the order in which ASX will release annual and half year reporting documents.</li> <li>• A reminder to allow enough time for ASX to review a draft notice of meeting and that additional time is required if there are waivers from any listing rules in connection with the notice.</li> <li>• A reminder about annual listing fees.</li> <li>• A reminder that ASX will not grant a waiver of listing rule 7.3.9 if a Security Purchase Plan (SPP) offer closes before the date of the security holder meeting. This is because the identity of the SPP participants will be known at the date of the meeting and their votes can readily be determined and excluded by the entity.</li> <li>• A reminder to complete all necessary steps required before the timetable deadline on Day 0 in relation to a corporate action timetable referred to in Appendix 7A.</li> </ul>

<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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- A warning from ASX that invoices relating to membership or maintenance of International Identification Numbers (ISINs) from third party organisations are not legitimate.
  - A reminder about upcoming deadlines for periodic reports.
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07/23

Published on 27 September 2023 covering:

- A reminder that the ASX Market Announcement Office closes one hour later due to daylight savings.
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