



# ASX Listings Compliance Activities Report

**1 October 2023 - 31 December 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 12 entities to the ASX official list and quoted their securities and did not reinstate any 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            | The entity had an existing listing on another exchange. ASX had concerns that the IPO offer price was not reflective of the market price of the entity's securities having regard to the trading price on the other exchange. ASX was also concerned that the entity did not have sufficient working capital to meet its business objectives or to continue as a going concern without raising further capital shortly after listing, and that its anticipated revenues and expenses did not provide sufficient evidence that the entity's business operations had any substance. The entity had performance securities on issue with terms that did not appear to be consistent with Listing Rule Guidance Note 19. |
| D            | The entity's business strategy was focused on the identification and development of opportunities in the clean energy technology sector. ASX had concerns that the entity had not secured key licenses, patents and intellectual property rights that it would need to operate its business. The entity proposed to develop a number of projects but none of them individually or in aggregate had advanced to the stage where the entity would be suitable for listing. None of the projects had been commercialised, nor did they have a clear and defined path to commercialisation.  |
| D            | ASX had concerns about the composition of the board, which was dominated by an executive chair and their family members. ASX was also concerned by the entity's failure to provide material information to ASX with its application for in-principle advice and with the track record of one of the directors in relation to continuous disclosure matters at another listed entity.   |
| D            | ASX had concerns about promoters and management holding interests in projects and licenses that were different from the interests of the entity's ordinary shareholders. ASX also had concerns about the composition of the board, which was dominated by an executive chair and their family members.   |
| D            | A material part of the entity's listing proposition was a renewable energy project. ASX had concerns that the entity had not completed a technical study to a sufficient level of confidence to demonstrate that the business operations of the project would have any substance. ASX was also concerned that the underlying technology was not proven at scale, that the entity had not secured key government or regulatory approvals to construct and operate the project, and that the entity had not entered into any agreements that demonstrated the potential to commercialise the project.  |

## Waiver applications

During the period of this report, ASX granted 76 waivers and declined 13 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   |
|-----------------|--|
| 2.1 condition 2 | The entity intended to raise capital as part of a re-compliance transaction and sought a waiver to issue shares for less than \$0.20. As part of the transaction, the entity would consolidate its share capital. The waiver was not granted since the proposed consolidated share price would be higher than the proposed price for the capital raising shares. ASX was concerned that this would not be fair to new and existing shareholders. |
| 4.7.3<br>4.7.4  | The entity changed its financial year end resulting in it having a transitional six month reporting period. The entity requested waivers to only prepare a single Corporate Governance Statement and Appendix 4G covering this six month transitional period and the subsequent 12 month financial year. The waivers were not granted since it would result in a gap of approximately 18 months  |

|                               |   |
|-------------------------------|---|
| 4.10.3                        | between annual reporting documents, which was contrary to the underlying policy that the information needs to be provided at least annually.  |
| 6.23.3                        | The entity wanted to amend the terms of its issued options to reduce their exercise price and extend their expiry date within a short period after their issue. It was intended that the options would be quoted. The terms of the options should have been carefully deliberated prior to their issue. The waiver was not granted.   |
| 7.3.4                         | The entity had entered into a farm-in and joint venture agreement. The entity sought a waiver to issue securities under the agreement more than three months after a proposed shareholder meeting. The maximum number of securities to be issued was not known and there was no floor price for the conversion of the securities. The waiver was not granted.   |
| 7.3.9                         | The entity intended to hold an extraordinary general meeting between Christmas and New Year's Eve to approve resolutions to raise capital via a placement and share purchase plan (SPP). The entity requested a waiver to allow eligible shareholders who could participate in the SPP to vote on the resolution to approve the SPP and its attaching options. In the circumstances, ASX refused to grant a waiver that would facilitate the entity holding a shareholder meeting over the holiday period.  |
| 7.5.4                         | The entity had entered into a loan agreement to refinance its debt facilities. The loan agreement provided that the entity would issue ordinary shares as payment for the principal loan amount over a period of approximately four years. The entity requested a waiver to permit the ordinary shares to be issued over the four year period. There was no clear and compelling commercial reason to grant the waiver.   |
| 7.9                           | The entity was the target of an off-market takeover bid. The entity requested a waiver to permit the issue of options and performance rights under an employee incentive plan within three months of being notified of the takeover bid without the need for shareholder approval. Offers under the incentive plan had not been sent to eligible employees prior to the receipt of the bid. The waiver was not granted.   |
| 10.11                         | The entity requested a waiver to permit directors to participate in the shortfall of a pro rata issue on the same terms as other shareholders without obtaining shareholder approval. The waiver was not granted having regard to the note to Listing Rule 10.12, exception 1 and the other avenues open to the entity to facilitate director participation without the need for a waiver.  |
| 10.13.5                       | The entity requested a waiver to issue securities later than one month after the date of a shareholder meeting so that the securities could be covered by the "3% creep in 6 months" exception to section 606 of the Corporations Act 2001. This was not an appropriate reason for granting a waiver.   |
| 14.7<br>2 separate<br>waivers | <p>In the first case, the entity intended to raise capital using convertible notes. Under the terms of the notes, interest could be capitalised over the five year maturity period and paid in shares at the end of the period, instead of being paid in cash over the period. The entity requested a waiver to permit a director to be issued interest shares at maturity rather than within one month of the shareholder meeting as contemplated in the notice of meeting. The waiver was not granted.</p> <p>In the second case, the entity intended to raise capital to acquire assets. The negotiations between the parties were delayed and the entity requested a waiver to permit the issue of the securities at a later date. The entity had not been able to demonstrate that the cause of the delay was outside of its control and the waiver was not granted.</p> |

## Enforcement letters

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

| Type                       | Number of letters |
|----------------------------|-------------------|
| Price query <sup>4</sup>   | 56                |
| Aware <sup>5</sup>         | 24                |
| Show cause <sup>6</sup>    | 1                 |
| ASIC referral <sup>7</sup> | 6                 |

## 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   |
|--------|---|
| 08/23  | Published on 18 October 2023 covering: <ul style="list-style-type: none"> <li>• Updates to Guidance Note 15 – ASX Listing Fees and associated fee arrangements.</li> <li>• A reminder about upcoming periodic report deadlines.</li> </ul>  |
| 09/23  | Published on 8 December 2023 covering: <ul style="list-style-type: none"> <li>• A reporting calendar for listed entities.</li> <li>• Observations from the AGM season which highlighted a number of common issues that ASX encountered when reviewing notices of meeting.</li> <li>• ASX’s access audit of all ASX Online users.</li> <li>• ASX’s approach to Listing Rule 6.23 waivers.</li> </ul> |

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<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.