

# **Listing and Waiver Applications Declined by ASX**

**1 January 2017 – 31 March 2017**



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### Background

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 high level reasons why it has declined certain listing and waiver applications.<sup>1</sup>

### Listing applications declined over the period

The table below summarises for the period of this report:<sup>2</sup>

- applications for admission to the official list that ASX has declined;
- requests to approve a notice of meeting containing a resolution of security holders approving a backdoor listing transaction which ASX has declined on the basis that ASX is likely to reject the entity's application for readmission to the official list in due course; and
- requests for preliminary advice on the suitability of an entity for listing where ASX has indicated that the entity is not suitable for listing.

Entity	Reasons
Entity A	Entity A approached ASX for a preliminary view on the acceptability of its structure and operations for a listed entity. The entity sourced information from unconventional sources to assist customers in betting on races and sporting events. It was also developing digital on-line sports games. It was making substantial losses and its accounts included a statement expressing uncertainty about its ability to continue as a going concern. ASX was not satisfied that Entity A's structure and operations were appropriate for a listed entity. ASX was concerned about the unusual nature of its business model,

<sup>1</sup> This information is published by ASX in performance of its obligations under the Corporations Act 2001 (Cth) 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: see the "Waivers" tab at <http://www.asx.com.au/regulation/rules/asx-listing-rules.htm>.

<sup>2</sup> This publication is a point-in-time publication reflecting listing applications declined by ASX over the period of this report. It should be noted that some of the entities whose listing applications have been declined by ASX and mentioned in this or in earlier editions of this publication may have since restructured their proposals to address ASX's concerns.

	regulatory uncertainty as to the legality of the proposed on-line sports games and its financial condition.
Entity B	Entity B proposed a back door listing transaction involving the acquisition of a private company carrying on business in an emerging market. ASX declined to approve Entity B's notice of meeting seeking shareholder approval to the transaction on the basis ASX would be likely to reject its application for readmission to the official list in due course. ASX had concerns about some anomalies in the consolidated financial statements of the company and that a majority of Entity B's directors after the acquisition would lack suitable ASX or industry experience. ASX also had concerns about the way in which Entity B proposed to satisfy the 20% free float requirement, through the issue of new shares to investors in Entity B and an associated sell down facility.
Entity C	Entity C proposed a back door listing transaction involving the acquisition of a private company carrying on business in an emerging market. ASX declined to approve Entity C's notice of meeting seeking shareholder approval to the transaction on the basis ASX would be likely to reject its application for readmission to the official list in due course. ASX had concerns about Entity C's proposed board composition following completion of the acquisition, raising questions about the entity's governance arrangements generally and whether the board would have the necessary industry experience to manage the new business activities of the entity. ASX also had concerns about some anomalies in the financial statements of the private company and whether the entity was raising sufficient funds to have adequate working capital to achieve its stated objectives.
Entity D	Entity D approached ASX for a preliminary view on the acceptability of its structure and operations for a listed entity. Entity D was proposing to raise funds to acquire an entity carrying on business in an emerging market. ASX advised it would be likely to reject Entity D's application for admission to the official list. The business being acquired by Entity D had previously been the subject of a reverse takeover listing transaction with an entity listed on an overseas exchange which did not proceed because of regulatory concerns.

### Waiver applications declined over the period

ASX Listing Rule	Reasons for declining waiver
Listing Rule 2.1 Condition 2	The entity was undertaking a back door listing transaction and requested a waiver to permit the issue price of new shares to be less than 20 cents. The entity had undertaken a material capital raising in the lead up to announcing the proposed back door listing transaction. The waiver was declined because the entity did not satisfy the policy for such waivers in paragraph 8.8 of Guidance Note 12.
Listing Rule 5.5	A foreign incorporated entity dual listed on ASX and an overseas exchange had an existing waiver to lodge its Appendix 5B with ASX 45 days after the end of each quarter. The entity requested a waiver to permit it to lodge its fourth quarter Appendix 5B with ASX within 90 days of the end of the quarter, to align with the year-end reporting requirements in its home jurisdiction. The waiver was declined on the basis that an Appendix 5B is material information, and a waiver extending the lodgement deadline to 90 days would render the information stale by the time it was released.

<p>Listing Rules 7.1 and 7.1A</p>	<p>The entity proposed to undertake a placement to investors. The wholesale component of the entitlement offer was underwritten. The entity requested a waiver of Listing Rules 7.1 and 7.1A to permit the number of securities that may be issued under the placement to be calculated by reference to the number of securities on issue immediately following completion of the entitlement offer. The waiver was declined as it is not appropriate to permit an entity that already has the benefit of the larger placement capacity in Listing Rule 7.1A to further increase that placement capacity and more heavily weight the capital raising towards the placement, rather than the pro rata component.</p>
<p>Listing Rule 9.1.3</p>	<p>As a precursor to listing on ASX, the entity had acquired 100% of the issued capital of another company that held interests in mining tenements. The assets acquired were “classified assets”, as defined in the Listing Rules. The entity requested a waiver not to have to issue restricted securities as consideration for the acquisition of the classified assets and apply the restrictions in Appendix 9B to the shareholders of the vendor company. The waiver was declined because it was not consistent with ASX policy.</p>
<p>Listing Rule 14.7</p>	<p>The entity sought a waiver of the requirement for issues of shares to directors to take place within one month of the meeting approving the issue under Listing Rule 10.11. The waiver was requested to allow additional time to issue shares to certain non-executive directors that had been approved at the entity’s annual general meeting. The entity advised the delay in the issue of shares was caused by the unavailability of directors during the holiday season. The waiver was declined.</p>