

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

**1 April 2019 – 30 June 2019**



# Listing and Waiver Applications Declined by ASX

1 April 2019 – 30 June 2019

## 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 in-principle 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 proposed to acquire all of the issued share capital of an unlisted payment solutions service provider. This was a back door listing requiring Entity A to re-comply with the admission and quotation requirements in the Listing Rules. ASX advised Entity A that it would exercise its discretion under listing rule 1.19 to decline its application for re-admission to the official list. Factors relevant to this decision were the multiple and conflicting roles of the shareholders, directors and advisers of the entities involved, the exorbitant fees initially proposed by the various advisers involved in the transaction, the way in which the consideration payable for the acquisition was structured to minimise the downside to the vendors if the backdoor listing did not proceed, the proposed |

<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.

|          |   |
|----------|---|
|          | composition of the board, and the high degree of dependence of the unlisted entity's revenue on a single contract that could be terminated at any time without notice.  |
| Entity B | Entity B proposed to acquire a 60% interest in a mining project in an emerging market owned by Entity B's major shareholder. This was a back door listing requiring Entity B to re-comply with the admission and quotation requirements in the Listing Rules. ASX advised Entity B that it would exercise its discretion under listing rule 1.19 to decline Entity B's application for re-admission to the official list. Factors relevant to this decision were the multiple and conflicting roles of the major shareholder, the lack of independent directors on the proposed board and the inherently risky jurisdiction in which the mining project is based.   |
| Entity C | Entity C had developed a system to measure and detect integrity concerns with infrastructure assets. ASX advised Entity C that it would exercise its discretion under listing rule 1.19 to decline its application for admission to the official list. ASX was concerned about the early stage of its business operations and its limited operating and financial history.  |
| Entity D | Entity D proposed to acquire all of the issued share capital of an unlisted entity that was developing security-related technology in an emerging market. This was a back door listing requiring Entity D to re-comply with the admission and quotation requirements in the listing rules. ASX advised Entity D that it would exercise its discretion under listing rule 1.19 to decline Entity D's application for re-admission to the official list. ASX was concerned about the veracity of the large valuation that was being ascribed to the unlisted entity in the transaction. ASX was also concerned about the fact that the controlling shareholder would control 75% of Entity D's shares after the transaction, the composition of its proposed board, the limited connections of the unlisted entity with Australia and the jurisdiction where its main business operations are carried out.  |
| Entity E | Entity E proposed to acquire all of the issued shares of an unlisted entity wholly owned by a related party of Entity E. The unlisted entity's only material asset was a single real estate asset requiring re-development. This was a back door listing requiring Entity E to re-comply with the admission and quotation requirements in the listing rules. ASX advised Entity E that it would exercise its discretion under listing rule 1.19 to decline its application for re-admission to the official list. ASX was concerned that the property would be undergoing redevelopment for a significant period and Entity E's proposed capital raising was insufficient to complete that redevelopment, resulting in the need for a further capital raising in the near term. ASX was also concerned that the related party intended to subscribe for a material amount of shares under Entity E's proposed fund raising, giving the related party substantial control of Entity E. |
| Entity F | Entity F develops and distributes nutrition products and supplements. ASX advised Entity F that it would exercise its discretion under listing rule 1.19 to decline its application for admission to the official list. ASX was concerned about the early stage nature of the business and its financial performance.   |
| Entity G | Entity G is developing medical technology software in another country, which is designed to assist physicians detect and diagnose symptoms. ASX advised Entity G that it would exercise its discretion under listing rule 1.19 to decline its application for admission to the official list. ASX was concerned about the nascency of its business operations, its limited operating and financial history and the absence of any real connection between Entity G and Australia.   |

|          |  |
|----------|--|
| Entity H | Entity H proposes to acquire an unlisted resource exploration company that operates in an emerging market. This was a back door listing requiring Entity H to re-comply with the admission and quotation requirements in the Listing Rules. ASX advised Entity H that it would exercise its discretion under listing rule 1.19 to decline its application for re-admission to the official list. Factors relevant to this decision were Entity H's previous non-compliance with numerous ASX Listing Rules, the proposed composition of its board and the board's lack of relevant industry experience.  |
| Entity I | Entity I is a newly established holding company incorporated to acquire a contracting services business. ASX advised Entity I that it would exercise its discretion under listing rule 1.19 to decline its application for admission to the official list. ASX was concerned about the significant number of shares Entity I had issued on incorporation for a nominal amount, in contrast to the value those shares would have based on the IPO price. ASX was also concerned by the absence of any independent valuation of the contracting services business in Entity I's prospectus, and the apparent lack of ASX listing experience of Entity I's lead manager, legal adviser, auditor and investigating accountant. |
| Entity J | Entity J has developed an app to manage account payments. ASX advised Entity J that it would exercise its discretion under listing rule 1.19 to decline its application for admission to the official list. ASX was concerned about the early stage of its business operations and its limited operating and financial history.  |

## Waiver applications declined over the period

| ASX Listing Rule    | Reasons for declining waiver  |
|---------------------|---|
| Listing rule 6.23.3 | The entity sought a waiver from listing rule 6.23.3 to enable it to amend the terms of its bonus options by extending the expiry date by three months. The bonus options are quoted on ASX and represent approximately 10% of the issued capital of the entity on a fully diluted basis. It is critical to the market's valuation of options and investors' decisions whether to buy, hold, sell or exercise options that the market has certainty as to the terms and conditions of the options, including the exercise period. For this reason, it is rare for ASX to waive listing rule 6.23.3 to allow an option to be extended. The waiver was refused as being inconsistent with the underlying purpose of listing rule 6.23.3.   |
| Listing rule 7.3.2  | The entity entered into a binding agreement to purchase business assets from the vendor. The consideration included tranches of shares to be issued 12 and 24 months from settlement of the acquisition. The deferred issues were not connected to any particular performance hurdle or milestone. The overall issue was outside the entity's listing rule 7.1 placement capacity and required shareholder approval under that rule. In such a case, listing rule 7.3.2 requires the date by which the entity will issue the shares to be no later than 3 months after the date of the meeting granting the approval. This rule ensures that an issue of shares that has been approved by shareholders is made within a reasonable timeframe following the approval. The waiver was declined as being inconsistent with the underlying purpose of listing rule 7.3.2. |

|   |   |
|---|---|
| <p>Listing rule 14.7 – three separate waivers</p> | <p>In the first and second cases, the entity received shareholder approval under listing rule 7.1 to issue shares no later than three months after the date of the meeting. The entity requested a waiver of listing rule 14.7 (which requires an entity that states in a notice of meeting that it will do something to do that thing) to allow the issue to be made later than the three month time limit. Typically, for these waivers to be granted, the delay has to be outside of the control of the entity and relate to matters such as unexpected delays involving government or regulatory approvals. No such reasons were put forward in either case and so the waivers were refused.</p> <p>In the third case, the entity received shareholder approval for the issue of securities pursuant to listing rules 7.1 and 10.11. The entity requested a waiver of listing rule 14.7 to allow the issue to be made later than the three month time limit applicable to the former and the one month time limit applicable to the latter. The entity was subject to a review by a government agency, which was ongoing at the time of the shareholder approval and likely to continue for a considerable period. It was not considered appropriate to grant a waiver in these circumstances given the uncertainty involved around the length and outcome of the review. Accordingly the waiver was not granted.</p> |
|---|---|