

Listing and Waiver Applications Declined by ASX

1 January 2019 – 31 March 2019



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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.¹

Listing applications declined over the period

The table below summarises for the period of this report:²

- 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 operated a financial services business predominantly in an emerging market. It sought in-principle advice about its suitability for listing on ASX. ASX advised the entity of the significant likelihood that it would fail to meet ASX's listing requirements and/or that ASX would exercise its discretion under Listing Rule 1.19 to decline the application. Factors relevant to this determination were the jurisdiction where the entity's main business operations were carried on, the relative inexperience of its directors, and concerns about the valuations attributed to the entity's existing investments in the emerging market in question (the majority of which were unlisted and featured put option rights entitling the entity to have the investments repurchased).

¹ 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>.

² 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.

Entity B	Entity B had just acquired a business of distributing electronics goods from related parties and applied for admission to the official list. ASX advised the entity that ASX would exercise its discretion under Listing Rule 1.19 not to admit the entity to the official list. ASX was concerned about the material difference between the price paid by the entity to the related parties for the business compared to the much lower price they had paid to acquire the business from a third party a short time beforehand. ASX had also seen a draft valuation prepared for determining the value of goodwill in the entity's financial statements, which indicated that the business had a much lower value than the value ascribed to it in the listing prospectus. Other factors relevant to the determination were the absence of any independent valuation of the business in the entity's listing prospectus, the increasing losses the business had made over the previous 3 financial years, and the absence of any lead manager supporting the entity's capital raising or participating in the due diligence process for its prospectus.
Entity C	Entity C operated facilities for waste disposal and the sale of recyclable waste materials. It sought in-principle advice about its suitability for listing on ASX. ASX advised the entity that there was a significant likelihood that it would fail to meet ASX's listing requirements and/or that ASX would exercise its discretion under Listing Rule 1.19 to decline the application. ASX was concerned about irregularities in the entity's audited financial statements and a proposed sell down of securities held by a promoter that the entity was proposing to facilitate, which would have been inconsistent with ASX's escrow regime.
Entity D	Entity D proposed to acquire a company that had developed a trading platform for portable devices through which users could execute orders to buy and sell exchange-quoted securities. The proposed acquisition amounted to a back door listing requiring the entity to re-comply with the admission and quotation requirements in chapters 1 and 2 of the Listing Rules. It sought in-principle advice about its suitability for a re-compliance listing on ASX. ASX advised the entity that there was a significant likelihood that it would fail to meet ASX's listing requirements and/or that ASX would exercise its discretion under Listing Rule 1.19 to decline the application for re-admission. Factors relevant to this determination were the very early stage of the company's business operations and its limited operating and financial history.
Entity E	Entity E operated a seafood manufacturing, distribution and export processing business in an emerging market that it had recently acquired from a related party vendor. It sought in-principle advice about its suitability for listing on ASX. ASX advised the entity that there was a significant likelihood that it would fail to meet ASX's listing requirements and/or that ASX would exercise its discretion under Listing Rule 1.19 to decline the application. ASX was concerned about the jurisdiction where the entity's main business operations are carried on, the fact that the entity was not acquiring ownership of all of the key assets needed to conduct its business operations, the ongoing dependency of the entity on the related party vendor to supply some of the key assets needed to conduct its business operations, and the concentration of shareholdings post-listing that would have been held by the related party vendor.

Waiver applications declined over the period

ASX Listing Rule	Reasons for declining waiver
Listing Rule 6.18	<p>The entity entered into a subscription agreement with an investor who became a major shareholder and cornerstone investor. The entity sought a waiver from Listing Rule 6.18 (the prohibition on having options exercisable over a percentage of a listed entity's capital) to grant the investor a top-up right which would allow the investor to participate in future placements of shares on equal terms with other parties to whom shares are offered, to the extent necessary for the investor to maintain its percentage shareholding in the entity.</p> <p>ASX's policy permits a listed entity to enter into agreements of this nature with shareholders with whom the entity has a strategic relationship, provided the shareholder pays the same price as other offerees in an issue of securities. The strategic relationship must encompass more than the investor simply being a major shareholder or a source of equity capital. There was no evidence of a strategic relationship in this case. Accordingly, the waiver was declined as being inconsistent with ASX policy.</p>
Listing Rule 7.3.2 – three separate waivers	<p>In the first case, the entity sought a waiver from Listing Rule 7.3.2 to issue securities to a proposed investor progressively until January 2021, more than three months after the date of the meeting approving the issue. The progressive issues were not connected to achieving any particular milestone and appeared to be largely for the convenience of the proposed investor. The waiver was declined as being inconsistent with ASX policy.</p> <p>In the second case, the entity sought a waiver from Listing Rule 7.3.2 to allow it to issue a second tranche of securities more than three months after the date of the meeting that approved the issue. The timing of the second tranche was not connected to achieving any particular milestone and again appeared to be largely for the convenience of the subscribers. It too was declined as being inconsistent with ASX policy.</p> <p>In the third case, the entity entered into a subscription agreement with a subscriber for convertible notes. The convertible notes could be drawn down in tranches over the next 36 months. There were no details provided about the intended use of funds and there was no meaningful connection between the tranches of the convertible notes to be drawn down and the achievement of any particular milestones. The waiver was declined as being inconsistent with ASX policy.</p>
Listing Rule 10.13.3 – two separate waivers	<p>In the first case, the entity sought a waiver from Listing Rule 10.13.3 to allow it to issue a second tranche of securities to a related party more than one month after the date of meeting approving the issue. The timing of the second tranche was not connected to achieving any particular milestone and appeared to be largely for the convenience of the related party. The waiver was declined as being inconsistent with ASX policy.</p> <p>In the second case, the entity sought a waiver from Listing Rule 10.13.3 to seek security holder approval for an issue of shares to a related party in a number of tranches at different times up to March 2020. There were no details provided about the intended use of funds and there was no meaningful connection between the tranches of shares to be issued and the achievement of any particular milestones. The waiver was declined as being inconsistent with ASX policy.</p>

Listing Rule 11.2	<p>The entity proposed to enter into an agreement where it would dispose of its main undertaking and sought a waiver so that it did not have to obtain shareholder approval under Listing Rule 11.2. ASX had provided confirmation that the business being disposed of was the entity's main undertaking. The waiver was declined as being inconsistent with the principle underlying Listing Rule 11.2.</p>
Listing Rule 14.7 – six separate waivers	<p>In first two cases, the entity received shareholder approval under Listing Rules 7.1 and 10.11 to issue shares no later than three months and one month respectively after the date of the shareholder meeting. The entity requested a waiver of Listing Rule 14.7 to allow the shares to be issued later than the applicable deadlines under those rules. The reason given was due to a downturn in market conditions. Typically, for these types of waivers to be granted, the delay has to be outside of the entity's control and relate to matters such as unexpected delays in obtaining government or regulatory approvals. No such reasons were given in these two cases. Accordingly, the waiver was declined.</p> <p>In the third case, the entity received shareholder approval for the issue of shares pursuant to Listing Rule 7.1 but the issue was delayed by the resignation and replacement of various directors. The entity requested a waiver to permit it to issue the shares later than three months after the date of the meeting. The waiver was declined. The director resignations and the fact that the entity would incur cost and inconvenience in holding another meeting to approve the issue were not considered sufficiently compelling reasons to warrant the granting of a waiver.</p> <p>In the fourth case, the entity received shareholder approval under Listing Rule 10.11 to issue a fixed number of unquoted options to a related party, no later than one month after the date of the shareholder meeting. The entity failed to grant the options within the one month period due to an administrative oversight and sought a waiver to cure that oversight. The waiver was declined.</p> <p>In the fifth case, the entity sought a waiver to issue shares as part consideration for an acquisition up to four months after shareholder approval. The entity stated in the notice of meeting seeking shareholder approval that the shares would be issued no later than five business days after the meeting. No compelling reasons were provided for the waiver and accordingly it was declined.</p> <p>In the sixth case, the entity sought a waiver to issue securities to related parties in a capital raising. The capital raising was delayed due to the December-January holiday season. The waiver was declined. The fact that this was a difficult time to raise funds was not considered a sufficiently compelling reason to justify a waiver.</p>