

Listing and Waiver Applications Declined by ASX

1 July 2018 – 30 September 2018



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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 carries on a business of recovering materials from waste products. It lodged an application for admission to the official list without having previously applied for in-principle approval about its suitability for listing on ASX. Following ASX's review of the application, ASX advised Entity A there was a significant likelihood that it would be regarded as not suitable for admission to the official list and it should withdraw its listing application. ASX was concerned about the early stage of its development; the governance of the entity, including the composition of its board and transactions with related parties; the entity's shareholder spread and free float; and the adequacy of its capital raising to meet its stated business objectives.

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 sought in-principle approval about its suitability for listing on ASX as a listed investment company. Entity B proposed to invest in and manage a portfolio of Bitcoin derivatives (futures contracts) traded on an overseas derivatives market. ASX advised Entity B there was a significant likelihood that it would be regarded as not suitable for admission to the official list due to the substantial regulatory uncertainty associated with cryptocurrencies in Australia and globally; the specialization of Entity B's investment mandate into a single high risk class; the start-up nature of the proposed manager of the entity's investment portfolio and its lack of a track record in managing this class of asset; and the fact that investors in Entity B would be exposed to underlying investments in cryptocurrencies that are subject to substantial volatility and risk not generally associated with retail investments.
Entity C	Entity C sought in-principle approval about its suitability for listing on ASX as a listed investment company. Entity C proposed to invest in and manage a portfolio of investment funds investing in blockchain protocols. These could include Bitcoin, Ethereum and other cryptocurrencies and initial coin offerings. ASX advised Entity C there was a significant likelihood that it would be regarded as not suitable for admission to the official list due to the early stage nature of its business; the substantial regulatory uncertainty and rapidly changing regulatory environment associated with initial coin offerings in Australia and globally; the fact that retail investors would be exposed to underlying investments that are primarily designed for sophisticated wholesale investors; and the inappropriateness of a closed-ended LIC as an investment vehicle for this type of investment.
Entity D	Entity D sought in-principle advice on its suitability for listing if it pursued a back door listing to become a property developer. ASX advised Entity D that there was a significant likelihood that it would not be regarded as suitable for re-admission to the official list. ASX was concerned about the adequacy of its proposed capital raising to carry out its business objectives. ASX was also concerned about the veracity of some of the disclosures Entity D had made previously about its property investments.
Entity E	Entity E sought in-principle approval about its suitability for listing on ASX. Entity E proposed to start a business of producing and selling diesel and petrol products from waste equipment using new technology. ASX advised Entity E that there was a significant likelihood that it would not be regarded as suitable for admission to the official list due to the very early stage and highly speculative nature of the proposed business. Relevant considerations included the fact that it had yet to secure any of the necessary planning or environmental approvals to conduct its operations and had no contracts in place with customers to take its output.
Entity F	Entity F sought in-principle approval about its suitability for re-admission to the official list if it pursued a proposed backdoor listing involving a company that had developed an app. ASX advised Entity F that there was a significant likelihood that it would not be regarded as suitable for re-admission to the official list due the very early stage and highly speculative nature of the company's business operations and its limited operating and financial history.

Entity G	Entity G sought in-principle approval about its suitability for listing on ASX. It proposed to start a business of researching, growing and selling medicinal cannabis products in Australia. ASX advised there was a significant likelihood that the entity would not be regarded as suitable for admission to the official list due to the very early stage and highly speculative nature of its proposed business, the fact that it had yet to secure a number of licences required to conduct its business operations, and concerns about its capacity to execute key components of its business plan.
Entity H	Entity H sought in-principle approval about its suitability for listing on ASX. Entity H commenced growing various vegetables at greenhouse facilities in July 2018 in an emerging market. Entity H also proposed to commence growing vegetables in another emerging market later in 2018 following construction of further greenhouses. ASX advised Entity H that there was a significant likelihood that it would not be regarded as suitable for admission to the official list due the very early stage of its business operations, the emerging markets in which it operates or proposes to operate, and the conflicts arising from the associations between a number of the seed shareholders and the proposed IPO lead manager.
Entity I	Entity I proposed to list a real estate company that is developing low density property projects in third and fourth tier cities in an emerging market. It had previously applied for in-principle approval about its suitability for listing on ASX in 2017 and had been advised that if it applied for admission to the official list, it was likely that ASX would exercise its discretion under Listing Rule 1.19 to refuse the application. Entity I had subsequently acquired a winery business in regional Australia which it proposed to further develop into a tourism site and was proposing to acquire further properties in the same region. It applied for fresh in-principle advice as to its suitability for listing on ASX. ASX again advised Entity I that there was a significant likelihood that it would not be regarded as suitable for admission to the official list due to ASX's concerns about the early stage nature of its investments in Australia; the high proportion of investment it had in the emerging market compared to Australia; previous experiences ASX has had with property developers based in emerging markets, especially those operating in more remote regions; and Entity I's relatively low anticipated free float.
Entity J	Entity J carried on an agriculture business in an emerging market. Late in the processing of its listing application, ASX became aware that a director had resigned due to pending criminal charges in an overseas jurisdiction. The supplementary prospectus the entity lodged claimed the director's resignation was due to ill health. In light of the lack of candour in this disclosure, ASX revisited its earlier decision about the suitability of the entity for admission to the official list and exercised its discretion to reject the application. Another relevant factor in ASX's decision included the length of time it had taken the entity to raise its minimum subscription, the suddenness with which that had occurred and the preponderance of shareholders with overseas addresses on its register, giving rise to concerns as to whether the entity may have used artificial means to achieve spread.

Waiver applications declined over the period

ASX Listing Rule	Reasons for declining waiver
Listing Rule 3.10.3	The entity sought a waiver not to notify ASX of any future issues of wholesale debt securities. The waiver was refused for being inconsistent with the policy underpinning the listing rule.
Listing Rule 1.1 Condition 12	The entity had entered into a binding merger implementation agreement with another entity, pursuant to which the entity would acquire the assets and undertaking of the other entity by way of a merger. The merger resulted in the entity having to re-comply with chapters 1 and 2 of the Listing Rules. In conjunction with the merger the entity proposed to complete a capital raising of between \$4 million and \$5 million at a share price of at least \$0.20. The entity also proposed to grant options to various parties with an exercise price of \$0.01 and sought a waiver of the requirement in this rule for options on issue at listing to have a 20 cent minimum option exercise price. The waiver was refused for being inconsistent with the policy underpinning the rule.
Listing Rule 7.1	The entity proposed to acquire an interest in exploration tenements, forming part of the entity's listing proposal. As part of the consideration for the acquisition of the interest in the exploration tenements, the entity agreed to issue deferred consideration shares upon the delineation of a JORC Code compliant non-gold mineral resource on the tenements. The deferred consideration milestone did not specify the type of mineral, and the grade and tonnage the resource needed to comprise of for the milestone to be achieved. Further, the maximum number of shares to be issued and the dilution to shareholders was unknown. Accordingly, the waiver was not granted.
Listing Rule 7.3.2 - two separate waivers	<p>In the first case the entity proposed to issue ordinary shares in stages to the vendor as consideration for an acquisition, subject to certain milestones being achieved. The share issues were to occur later than 3 months from the date of shareholder approval. The notice of meeting set out the details of the conditions precedent to the acquisition which had to be satisfied before the issue of the consideration shares. The maximum number of consideration shares that could be issued was not known and therefore was not specified in the notice of meeting because it was based on a formula linked to a 20 day VWAP and was uncapped. This had the consequence that shareholders were not in a position to give their informed consent to the issue of the consideration shares as they did not know the potential dilution involved. The waiver was declined for being inconsistent with the policy underlying the rule.</p> <p>In the second case the entity requested a waiver to issue shares as consideration for an acquisition of an interest in a company later than 3 months from the date of shareholder approval to satisfy the conditions precedent to the acquisition agreement. The waiver was declined as the entity could not reasonably demonstrate that the conditions precedent would take longer than 3 months from shareholder approval for the issue of the securities to be satisfied.</p>

Listing Rule 9.7	The entity requested a waiver to permit ASX restricted securities to be transferred from one shareholder to another shareholder. The waiver was declined on the basis the entity had not been able to demonstrate that the transfer would not have resulted in a change in the underlying beneficial ownership of the ASX restricted securities.
Listing Rule 10.13.3	The entity proposed to seek shareholder approval at a general meeting for the issue of three tranches of incentive shares to a related party to be issued later than one month and no later than 36 months after the date of the general meeting at which the proposed issues are approved. The tranches of fully paid ordinary shares would be issued should the entity's share price VWAP over 14 consecutive days on which trades in the Company's shares are recorded meet or exceed 3 different hurdles. The waiver was declined on the basis that there is a clear alternative to create a share plan facilitating the issue of equity incentives to the related party under Listing Rule 10.14.
Listing Rule 14.7	The entity received shareholder approval under listing rule 10.11 to issue a fixed number of options and convertible notes to a related party, no later than one month after the date of the meeting. The entity did not complete the issue of securities to the related party due to an internal administrative oversight and sought a waiver to avoid the need to seek a fresh shareholder approval under listing rule 10.11. Typically for waivers of this type to be granted, the delay has to be outside the control of the company and relate to matters such as unexpected delays involving government or regulatory approvals. For that reason the waiver was declined.