

# **ASX Listings Compliance Activities Report**

**1 October 2019 – 31 December 2019**



# ASX Listings Compliance Activities Report

## 1 October 2019 – 31 December 2019

### 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 high level reasons why it has declined certain listing and waiver applications, as well as information about some of its other activities monitoring and enforcing compliance with the listing rules.<sup>2</sup>

### Listing applications

During the period of this report, ASX admitted 31 entities to the official list and reinstated another 2 entities to quotation following the completion of back door listings.

The table below summarises the listings ASX declined during for the period of this report, comprising:<sup>3</sup>

- applications for admission to the official list that ASX declined;
- requests to approve a notice of meeting containing a resolution of security holders approving a backdoor listing transaction that ASX declined on the basis that ASX would be likely to reject the entity's application for readmission to the official list in due course; and

---

<sup>1</sup> Referred to in this report as the "Corporations Act". Unless otherwise indicated, references in this report to sections of an Act are to sections of the Corporations Act.

<sup>2</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>3</sup> This report 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 report may have since restructured their proposals to address ASX's concerns.

- 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 for rejection
Entity A	Entity A proposed to acquire a mining entity and spin-off all of its existing cryptocurrency related business activities to a newly incorporated unlisted company as part of a back door listing transaction. ASX was concerned about its prior unacceptable dealings with Entity A (including Entity A's successive business failures, numerous breaches of the ASX Listing Rules and an ASIC infringement notice for breaching s674 of the Corporations Act), the proposed composition of the board following re-admission, and the mining entity's two previous unsuccessful attempts to list on ASX.
Entity B	Entity B had recently begun growing cannabis for medicinal purposes in a South American country. ASX was concerned about the jurisdiction where Entity B's main business operations are carried out, and the early stage nature of its business operations.
Entity C	Entity C proposed to acquire a company developing a drug for treating cancer as part of a back door listing transaction. ASX was concerned about the very early stage of the company's proposed operations, with further early round testing and other pre-clinical development required before clinical trials could commence.
Entity D	Entity D proposed to explore for and commercially develop coal gasification projects in a South American country. ASX was concerned that Entity D had not yet obtained the required environment and development licences in that country to conduct such activities.
Entity E	Entity E proposed to acquire a company that provided AI-driven transformation solutions as part of a back door listing transaction. ASX was concerned about legal action involving the chairman of the target company alleging fraud in a stock transaction, which ASX uncovered through internet searches and which had not been disclosed to ASX in Entity E's application for in-principle advice about its suitability for listing on ASX.
Entity F	Entity F developed and commercialised patented technologies to enable communications to augment or supplant traditional modes of direct communication and provide navigation solutions. ASX was concerned about the early stage nature of Entity F's business operations, in particular its very small customer numbers and revenue.
Entity G	Entity G proposed to acquire a company domiciled in an African country as part of a back door listing transaction. The target company had a mining processing facility on care and maintenance and some exploration tenements of questionable value in that country. ASX was concerned that neither Entity G nor the target company had the licence required to operate the processing facility. ASX was also concerned by serious deficiencies in the accounts of the target company and the fact that the accounts did not comply with accounting standards acceptable to ASX.

Entity H	Entity H proposed to acquire a company holding a mineral deposit with a processing facility located in an emerging South East Asian market as part of a back door listing transaction. ASX was concerned about material differences between representations made to ASX in Entity H's application for in-principle advice and statements in its listing prospectus. This included a material increase in the estimated costs of the offer. ASX had also objected to Entity H using a proposed lead manager, only to find in the prospectus that Entity H had instead appointed it as a "corporate adviser" with a "placement mandate" entitling it to a percentage of funds raised by clients introduced and a deal advisory agreement entitling it to further material fees. Revised information about the shareholdings of various parties in the prospectus also indicated that Entity H would not meet the minimum 20% free float condition in the listing rules.
Entity I	Entity I proposed to develop LNG and power projects in Australia. ASX was concerned about the early stage nature of Entity I's business operations, the adequacy of its proposed capital raising, the fact that it had not yet obtained the necessary government approvals and licences needed to conduct its business and the proposed composition of its board, which had no-one with any relevant ASX experience.
Entity J	Entity J proposed to acquire a company owning two resources tenements in Western Australia as part of a back door listing transaction. ASX was concerned about an issue of a very large number of shares in Entity J to nominees of a corporate adviser in 2018 for nil consideration for restructuring and advisory services (constituting approximately 42% of the current share capital), the very tight timetable for completion given the impending deadline for removal of Entity J under ASX's long term suspended entity policy, and the inherent incentives and conflicts for the corporate adviser to proceed with a re-listing, as highlighted in ASIC Report 641 <i>An inside look at mining and exploration initial public offers</i> .
Entity K	Entity K's securities had been suspended from official quotation since February 2017 and it had been in voluntary administration since March 2019. Its business activities had included property development and property rental. It proposed to raise fresh capital to re-commence that business. ASX was concerned about the early stage of the proposed new business operations, the inability of Entity K to lodge unqualified accounts for the past three financial years, the very tight timetable for completion given the impending deadline for removal of Entity K under ASX's long term suspended entity policy, the small amount of capital that Entity K was proposing to raise, and the fact that Entity K had not yet appointed a lead manager to assist with the capital raising.

## Waiver applications

During the period of this report, ASX granted 268 waivers of the listing rules.

The table below summarises applications for listing rule waivers that were declined by ASX during the period of this report.

ASX listing rule	Reasons for declining waiver
Listing rule 1.1 condition 6 and listing rule 2.4	An entity incorporated in Australia and listed on an overseas securities exchange sought waivers from listing rule 1.1 condition 6 and listing rule 2.4 to enable it to not apply for quotation of all its ordinary shares on issue. A waiver from these rules is only granted to a foreign incorporated entity applying for admission as an ASX Listing that has a primary listing on an overseas securities exchange (other than the NZX mainboard) and that intends to use CHES Depositary Interests to facilitate the holding and transfer of its ASX quoted securities (see Guidance Note 4 <i>Foreign Entities Listing on ASX</i> section 3.4). The waivers were declined as being inconsistent with ASX policy.
Listing rules 4.2A and 4.2B	An entity incorporated in Australia and listed on an overseas securities exchange sought a waiver from listing rules 4.2A and 4.2B to enable it to provide interim and final financial reports to ASX at the same time it is required to lodge financial reports with the overseas securities exchange. The entity is incorporated in Australia and is subject to the Corporations Act. It is required to prepare and lodge accounts with ASIC within the timeframe stipulated in the Corporations Act. The waivers were declined as being inconsistent with ASX policy.
Listing rule 4.10.9	An entity incorporated in Australia and listed on an overseas securities exchange sought a waiver from listing rule 4.10.9 not to include in its annual report the names of the 20 largest holders of each class of quoted securities, the number of securities each holds and the percentage of capital each holds. Although the entity is listed on an overseas securities exchange, disclosure of these names will not impose an unreasonable burden. Additionally, disclosure of the top 20 largest holders is useful to investors, notwithstanding that nominee and depository entities hold stock in their own name. The waiver was declined as being inconsistent with ASX policy.
Listing rule 6.23.3	An entity sought a waiver from listing rule 6.23.3 to enable it to materially reduce the exercise price and extend the exercise period of options granted to certain directors and senior management. Listing rule 6.23.3 stipulates that changes to options which have the effect of reducing the exercise price, increasing the exercise period or increasing the number of securities received on exercise are prohibited. Given the extent of the proposed changes and the material number of options involved, the waiver was declined as being inconsistent with the policy underlying the rule.
Listing rule 6.23.4	An entity sought a waiver from listing rule 6.23.4 to enable it to amend the terms of performance rights granted to employees in advance of an expected change of control transaction by way of a scheme of arrangement without obtaining shareholder approval. Listing rule 6.23.4 prohibits an entity from amending the terms of an option/performance right where the amendment is not one governed by listing rule 6.23.3, without first seeking shareholder approval. The waiver was declined as being inconsistent with the policy underlying the rule.

Listing rule 7.3.2 <sup>4</sup>	<p>An entity entered into an agreement to issue convertible notes progressively in tranches. The majority of the convertible notes would be issued more than 3 months after the date of the shareholder meeting to approve the issue under listing rule 7.1. The conversion price for the notes was based on a discount to the prevailing VWAP.</p> <p>In these circumstances, ASX’s policy is to permit entities to seek shareholder approval for the issue of all the securities that may be issued under that transaction over the various phases, provided the milestones to be achieved which trigger the obligation to issue the securities are appropriate to the entity and the transaction in all the circumstances and adequate information can be given to shareholders about the future issues of securities. In this case the extent of dilution was unknown, there were no milestones connecting the tranches of funding and no compelling commercial reason for granting the waiver. Accordingly, the waiver was declined as being inconsistent with ASX policy.</p>
Listing rule 7.3.4	<p>An entity wished to seek approval for the issue of securities outside of the three month timeframe provided for in listing rule 7.3.4. The timing of the proposed issue was not connected to any particular milestone and appeared to be largely for the convenience of the entity in order to avoid the inconvenience of holding further meetings of shareholders to approve the issue of securities.</p> <p>In these circumstances, ASX’s policy is to permit entities to seek shareholder approval for the issue of all the securities that may be issued under that transaction over the various phases, provided the milestones to be achieved which trigger the obligation to issue the securities are appropriate to the entity and the transaction in all the circumstances and adequate information can be given to shareholders about the future issues of securities. In this case, there was no compelling explanation to justify the waiver being granted. Accordingly, the waiver was declined as being inconsistent with ASX policy.</p>
Listing rules 10.11 and 10.14	<p>An entity incorporated in Australia and listed on an overseas securities exchange sought a waiver from listing rules 10.11 and 10.14 to allow the entity to comply with the rules of the overseas securities exchange in relation to issues of securities to related parties, rather than ASX’s listing rules. The entity did not satisfy the criteria for such relief outlined in Guidance Note 4 <i>Foreign Entities Listing on ASX</i>, which is only available where the company is a foreign-incorporated company. The waiver was declined as being inconsistent with ASX policy.</p>
Listing Rule 10.13.5	<p>The entity proposed to grant current and incoming directors performance rights later than the one month timeframe provided for in listing rule 10.13.5. The timing of the proposed grant was not connected to any particular milestone. The waiver was declined as being inconsistent with the policy underlying the rule.</p>
Listing Rule 14.2.1	<p>An entity incorporated in Australia and also listed on an overseas securities exchange sought a waiver from listing rule 14.2.1 to permit its proxy form to conform to the requirements of the overseas securities exchange. The entity did not satisfy the criteria for such relief outlined in Guidance Note 4 <i>Foreign Entities Listing on ASX</i>, which is only available where the company is a foreign-incorporated company. The waiver was declined as being inconsistent with ASX policy.</p>

<sup>4</sup> Now listing rule 7.3.4 following the listing rule amendments that came into effect on 1 December 2019

## Enforcement letters

During the period of this report, ASX issued:

- 48 formal price queries;<sup>5</sup>
- 14 “aware” letters;<sup>6</sup>
- 2 “show cause” letters;<sup>7</sup> and
- 5 ASIC referrals.<sup>8</sup>

## Listed@ASX Compliance Updates

During the period of this report, ASX published four *Listed@ASX Compliance Updates*:<sup>9</sup>

- [Update 09/19 dated 14 October 2019](#): with information about the Listing Rules and Guidance Notes changes due to come into effect on 1 December 2019 in response to the 28 November 2018 consultation paper ‘*Simplifying, clarifying and enhancing the integrity and efficiency of the ASX listing rules*’.
- [Update 10/19 dated 31 October 2019](#): with information about changes to ASX’s online forms and other listing rule appendices, including new and updated forms to be used to notify ASX of various corporate actions under the Listing Rules changes due to come into effect on 1 December 2019.
- [Update 11/19 dated 28 November 2019](#): notifying the market that regulatory approval had been received for the Listing Rule changes due to come into effect on 1 December 2019 and drawing attention to the key changes to ASX’s Listing Rules.
- [Update 12/19 dated 20 December 2019](#): with information about changes to ASX’s long term suspended entities policy due to take effect on 3 February 2020 and advice on the new requirements in Listing Rule 15.5 regarding market announcements.

\*\*\*\*\*

---

<sup>5</sup> ASX will generally issue a formal price query 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.

<sup>6</sup> When ASX has concerns about whether an entity has disclosed market sensitive information at the time it should have under Listing Rule 3.1, it will typically issue an aware letter to the entity. The purpose of an aware letter is to enable ASX to be satisfied that the entity is in compliance with its continuous disclosure obligations under the listing rules.

<sup>7</sup> ASX will generally issue a show cause letter when it believes there has been a number of serious breaches so it is appropriate to terminate the entity’s admission to the official list under listing rule 17.12. The show cause letter gives the entity an ability to demonstrate good reasons for why it should not be removed from the official list. Examples of serious breaches can be poor corporate governance or breach of periodic reporting obligations.

<sup>8</sup> If ASX suspects that an entity has committed a significant contravention of the listings rules, or that an entity or any other person (such as a director, secretary or other officer of the entity) has committed a significant contravention of the Corporations Act, it is required under the Act to give notice under ss 792B(2)(c) / 821B(2)(c) to ASIC with details of the contravention. The purpose of such notice is so that ASIC can then consider what action, if any, it may wish to take in relation to the suspected contravention. ASX is further obliged under ss 792D / 821C to give reasonable assistance if requested by ASIC.

<sup>9</sup> *Listed@ASX Compliance Updates* are free email alerts sent to listed entities 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. To access them, you can [subscribe here](#) or download the free Listed@ASX app from the [Apple app](#) store and [Google Play](#). Past editions of *Listed@ASX Compliance Updates* can also be viewed [here](#).