

# **ASX Listings Compliance Activities Report**

**1 April 2020 – 30 June 2020**



**ASX**

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### 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>

This 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.

This report excludes data on ASX Debt Issuers.

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<sup>1</sup> Referred to in this publication as the 'Corporations Act'. Unless otherwise indicated, references in this publication to a section of an Act are to a section of the Corporations Act.

<sup>2</sup> This information is published by ASX in performance of its obligations under the Corporations Act 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>.

## Listing applications

During the period of this report, ASX admitted and quoted 7 entities and reinstated 1 entity to quotation following the completion of a backdoor listing. Further, ASX rejected<sup>3</sup> the following 4 applications seeking admission and 6 applications seeking to be reinstated to quotation via a backdoor listing.

Entity	Reasons for rejection
Entity A	ASX was concerned about the entity's joint venture arrangements requiring distribution of a material percentage of the processing plant's profit to a joint venture entity. ASX had further issues with its capital structure, including the proposed offer price and the resultant implied market capitalisation, and the proposed terms of certain loyalty options.
Entity B	ASX was concerned about the entity's proposal to operate in an emerging market in Africa whose regulation of the narcotics industry is at a nascent stage. ASX also had issues with the early stage of its business.
Entity C	ASX was concerned about the early stage of the business and the fact that it had no material agreements yet in place for its new business operation.
Entity D 2 separate rejections	ASX was concerned that the listing was being used in reality to list an unproven processing technology owned by its largest shareholder and being contracted to the entity for substantial payments to that shareholder. ASX had further issues with the implied valuation uplift upon listing and with the retention of its existing board and management (noting the entity's poor performance over an extended period).
Entity E	ASX was concerned about the significant number of shares proposed to be issued to shareholders in the target entity, the fact that its patents were soon to expire and the early stage of its business.
Entity F	ASX was concerned about the early stage of the entity's business and the fact that it had not undertaken any relevant clinical studies. ASX also had issues with the number of shares proposed to be issued for services rendered to an advisory firm.
Entity G	ASX was concerned with its previous unacceptable dealings with the entity and its advisers as part of a backdoor listing transaction.
Entity H	ASX was concerned the entity would have inadequate working capital upon listing. ASX had further issues with the early stage of its business.
Entity I	ASX was concerned about the composition of the board that had limited ASX experience, its absence of any substantial connection with Australia and the early stage of its business.

<sup>3</sup> Rejections are based on the following applications: In-principle advice on the application of Listing Rule 1.1 condition 1 and Listing Rule 1.19, Appendix 1A and Appendix 1C. ASX will also include rejections of an approved application that are subsequently rejected before admission to the official list if ASX becomes aware of information that give grounds to do so.

## Waiver applications

During the period of this report, ASX granted 83 waivers and declined the following 10 waivers.

ASX listing rule	Reasons for declining waiver
1.1 condition 12	The entity sought a waiver to grant options with an exercise price less than 20 cents cash as part of a backdoor listing transaction. Waivers of the rule are granted for backdoor listing transactions if the last traded price was above \$0.02 or a consolidation is announced such that the price would have been equivalent to or above \$0.02. In this case the proposed consolidation was not sufficient for the market value for the entity's securities traded over the 20 trading days prior to its suspension to have been equivalent to more than 2 cents each. Accordingly, the waiver was not granted.
2.1 condition 2	The entity made application for a waiver of listing rule 2.1 condition 2 (in conjunction with the waiver from listing rule 1.1 condition 12 above which was not granted) to issue shares at less than 20 cents. Waivers of this rule are granted for backdoor listing transactions where the last traded price was at or above \$0.02 or a consolidation is announced such that the price would be equivalent to or above \$0.02. As the proposed consolidation ratio was not sufficient for the market value for the entity's securities traded over the 20 trading days prior to its suspension to have been equivalent to more than 2 cents each, the waiver was not granted.
6.18	<p>The entity proposed to offer anti-dilution rights to another party to maintain its percentage shareholding in the entity by having a right to participate in future issues of securities. ASX considers such anti-dilution arrangements to be contrary to the spirit of listing rule 6.18, as they effectively give the holder of the anti-dilution rights the ability to maintain a percentage of the issued capital in much the same way that a percentage option would.</p> <p>Prior to 1 December 2019, ASX granted waivers from listing rule 6.18 to permit an entity to give an anti-dilution right to a strategic security holder. The introduction on 1 December 2019 of listing rule 10.11.3 extending listing rule 10.11 to substantial (10%+) holders with board representation cuts across the operation of these waivers.</p> <p>Section 2.11 of guidance note 25 <i>Issues of Equity Securities to Persons in a Position of Influence</i> states that following the introduction of listing rule 10.11.3, ASX will no longer grant these waivers from listing rule 6.18.</p>
6.23.3	The entity sought a waiver to amend the terms of unquoted options to extend the expiry date. The extent of the proposed change and the possible dilutionary impact on the entity's issued capital on an undiluted basis was material. A waiver of listing rule 6.23.3 was not considered appropriate in the circumstances as the proposed adjustments undermined the integrity of that rule.

<p>7.3.4</p> <p>2 separate waivers</p>	<p>In the first case, the entity proposed to issue debt securities to be cash settled unless terms providing for the conversion of debt to equity and issue of conversion shares are approved at its upcoming general meeting for the purpose of listing rule 7.1. Guidance note 21, section 5.6 states that absent a waiver from ASX, the conversion to ordinary shares must occur no later than three months after the date of the shareholders' meeting approving the issue of the underlying securities unless the entity can demonstrate that is a clear and compelling commercial reason not to do so. In this case the issue of the underlying securities was proposed to occur seven years after shareholders approved the conversion of debt to equity. There was no clear and compelling commercial reason in this case and the waiver was refused.</p> <p>In the second case the entity proposed to seek shareholder approval under listing rule 7.1 to issue ordinary securities by way of general placement. It sought a waiver from listing rule 7.3.4 to allow it to issue the securities later than three months after the shareholders meeting. No compelling reason was provided and accordingly, the waiver was not granted.</p>
<p>10.1</p>	<p>The entity sought a waiver from listing rule 10.1 for a lease agreement with a related party (a listing rule 10.1 party), being an entity controlled by a director of the entity. As noted in guidance note 24, section 6.4, the granting of a lease by a related party (as landlord) to an entity (as tenant) is an acquisition of a leasehold interest in land by the entity from the related party for the purposes of this rule. The lease payments met the definition of a substantial asset contemplated by listing rule 10.2, and therefore listing rule 10.1 applied to the agreement. ASX was not satisfied that there was no reasonable prospect of the counterparty influencing the terms of the transaction to benefit themselves at the expense of the entity. Accordingly the waiver was not granted.</p>
<p>10.11.3</p>	<p>The entity sought a waiver from listing rule 10.11.3 to permit it to issue securities to an existing shareholder so that it could maintain, pursuant to the strategic alliance and anti-dilution right, its percentage interest in the issued share capital of the entity up to a maximum of 25%.</p> <p>Listing rule 10.11.3 was introduced on 1 December 2019 and guidance note 25 states that ASX will no longer grant waivers from a related listing rule 6.18 (see above). Notwithstanding this, ASX may agree to grant a waiver from listing rule 10.11 in circumstance where it supports, and does not extend, the existing operation of a waiver from listing rule 6.18 previously granted to an entity for the benefit of the relevant holder.</p> <p>In this case, a listing rule 6.18 waiver was granted in 2017 to permit the shareholder to participate in future placements of shares on equal terms with other parties to whom shares are offered provided that the shareholder's percentage shareholding did not increase above 19.9%. Given that that shareholder's percentage shareholding was already at 24.01%, the listing rule 6.18 waiver was considered to have lapsed, and on that basis the waiver from listing rule 10.11.3 was refused.</p>
<p>10.13.5</p>	<p>ASX is prepared to consider granting waivers from listing rule 10.13.5 where the reason for having to delay the issue of securities to a person of influence is outside of the entity's control. A genuine delay which is outside of the entity's control can be established, for example, where the issue of securities is contingent upon the grant of a licence or approval by a government authority, or where court approval needs to be obtained prior to issuing the securities. The entity's rationale for requesting an extension so that the issue could occur 12 months after obtaining shareholder approval was for convenience and flexibility. There was no compelling case to justify the granting of the waiver and it was therefore rejected.</p>

14.7	The entity sought a waiver to permit it to issue securities later than one month after the date of the meeting. Notwithstanding that the additional time requested was not excessive, there had been a fundamental change to the entity's circumstances. The underlying policy behind listing rule 10.13.5 is that an issue of securities to a person in a position of influence that has been approved by security holders should be made within a reasonable timeframe following the approval. This is to minimise the possibility that the circumstances prevailing when the issue is made will have changed materially from that at the time the approval was given. In light of the material change to the entity's circumstances, the waiver was not granted.
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## Enforcement letters

During the period of this report, ASX issued the following enforcement letters.

Type of enforcement letter	No. of letters
Price query <sup>4</sup>	85
Aware <sup>5</sup>	23
Show cause <sup>6</sup>	2
ASIC referral <sup>7</sup>	6

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<sup>4</sup> ASX will generally issue a 'price query letter' 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. For further information about price query letters, see section 8.3 of Guidance Note 8 *Continuous Disclosure: Listing Rules 3.1 – 3.1B*.

<sup>5</sup> ASX will typically issue an 'aware letter' to the entity when it has concerns about whether an entity has disclosed market sensitive information at the time it should have under listing rule 3.1. The letter will ask when the entity became aware of the information in question and test when it should have been disclosed under the listing rule 3.1. For further information about aware letters, see section 8.4 of Guidance Note 8 *Continuous Disclosure: Listing Rules 3.1 – 3.1B*.

<sup>6</sup> A 'show cause letter' is a letter initiating a process to terminate an entity's admission to the official list under listing rule 17.12. It will outline the reasons why ASX is proposing to terminate the entity's admission to the official list and ask it to 'show cause' why it should not be removed from the official list.

<sup>7</sup> If ASX suspects that an entity has committed a significant contravention of the listings rules, or that a listed entity or any other person (such as a director, secretary or other officer of a listed entity) has committed a significant contravention of the Corporations Act, it is required to give notice under sections 792B(2)(c) / 821B(2)(c) to ASIC with details of the contravention. The purpose of the notice is so that ASIC can then consider what enforcement action, if any, it may wish to take in relation to the suspected contravention.

## Listed@ASX Compliance Updates

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. You can subscribe to and view *Listed@ASX Compliance Updates* [here](#) or download the free Listed@ASX app from the [Apple app store](#) and [Google Play](#).

During the period of this report, ASX published the following *Listed@ASX Compliance Updates*.

Update	Summary
04/20	<p>Published on 22 April 2020 with:</p> <ul style="list-style-type: none"> <li>• The main changes to ASX's covid-19 emergency capital raising relief;</li> <li>• Guidance on requesting back-to-back trading halts for covid-19 related capital raisings;</li> <li>• Advice on the cancellation of dividends/distributions and the impact this could have on ETOs; and</li> <li>• A deferral to the start date for the requirement in listing rule 1.1 condition 13 and listing rule 12.6 that persons responsible for communicating with ASX on listing rule matters must have completed an approved listing rule compliance course and attained a satisfactory pass mark in the examination for that course, from 1 July 2020 to 1 July 2021.</li> </ul>
05/20	<p>Published on 1 May 2020 with:</p> <ul style="list-style-type: none"> <li>• ASX's covid-19 fee relief for listed entities, effectively spreading the payment of annual listing fees for FY 21 over 6 months in two equal instalments (one due at the end of July 2020 and the other due at the end of January 2021);</li> <li>• The further minor changes to ASX's temporary emergency capital raising relief;</li> <li>• The need to engage early with ASX on capital raisings proposing to rely on ASX's class waivers; and</li> <li>• The compliance issues associated with convertible notes and 'collateral securities' under the requirement in listing rule 6.1 that the terms that apply to each class of a listed entity's securities must, in ASX's opinion, be appropriate and equitable.</li> </ul>
06/20	<p>Published on 17 June 2020 with:</p> <ul style="list-style-type: none"> <li>• ASX's class waiver giving effect under the listing rules to the relief granted by ASIC in ASIC Corporations (Extended Reporting and Lodgment Deadlines—Listed Entities) Instrument 2020/451 extending the statutory reporting and lodgment deadlines in the Corporations Act for listed entities;</li> <li>• Updates proposed to the Appendix 3A.1, 3A.2 and 3B listing rule forms to be made as part of the STP phase 2 project on 18 July;</li> <li>• A reminder to Appendix 4C quarterly cash flow reporters of the new requirement added to the listing rules in December 2019 for them to lodge a quarterly activity report with their quarterly cash flow report;</li> <li>• A further reminder to Appendix 4C and 5B quarterly cash flow reporters of the need to provide all relevant information in items 7 (financing facilities) and 8 (estimated cash available for future operating activities) of the new quarterly cash flow reports released in December 2019;</li> <li>• Guidance on amending an issue date for corporate actions or new classes of securities; and</li> <li>• Guidance agreed with the Australian Custodial Services Association (ACSA) about avoiding the mandatory use of cheques in corporate actions and takeovers, to the exclusion of electronic payment/receipt mechanisms.</li> </ul>

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