



The ASX Listing Rule Waiver Regime

Research Paper Prepared By



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KEY FINDINGS

- The ASX waiver system is not as transparent as one of its competitors, the NZX. Waivers are usually disclosed a month in arrears and minimal explanation is provided. This compares unfavourably with the level of disclosure and timeliness of notification provided by the NZX. The ASX system is, however, more transparent than those of the London Stock Exchange and New York Stock Exchange.
- The ASX sometimes interprets Listing Rules narrowly. This can give rise to similar issues as the granting of waivers. A narrow interpretation of the Rules may also be regarded as incompatible with the ASX's public commitment to the Listing Rules as being 'principles-based'.
- It is unclear to what extent the ASX refuses waiver applications. A total of four refused waiver applications were disclosed in the monthly waiver register between July 2005 and December 2006, although in all cases this was when multiple waivers had been sought and all but a small number had been granted. The ASX has confirmed that waivers applied for but not granted "are not disclosed primarily for confidentiality reasons".
- A substantial majority (approximately 91%) of the waivers reviewed by ISS between July 2005 and December 2006 appeared to be commercially sensible and designed to avoid technical rule applications that have little or no impact on market integrity and investor protection.
- Of the waivers reviewed, 96 or 8.8% were initially identified as potentially being of concern for security holders. These waivers concerned benefits to and transactions with related parties, voting rights for external managers of listed infrastructure vehicles and executive remuneration. On further analysis, reasonable commercial grounds for granting a waiver were in ISS's view apparent in 28 of these 96 cases, leaving 68 waivers in the "potentially of concern" category. This represents 6.2% of the waivers reviewed.
- The overall effect of these potentially concerning waivers was to reduce shareholder rights to approve transactions with various kinds of related parties: Senior executives, major shareholders and external managers.
- The ASX routinely grants waivers to the related party listing rules encompassing pre-emptive rights over substantial assets, contracts with related parties and executive remuneration, on the basis these arrangements were disclosed in the pre-listing prospectus. This indicates the importance of investors being aware of these issues in considering whether to subscribe for securities under a prospectus.
- Of the 424 listed entities that sought waivers during the study period, 90 were members of the S&P/ASX 300. This indicates that waivers are routinely sought by companies in the investment universe of ACSI members.
- Externally managed listed entities accounted for a disproportionate share of all waivers granted – they represented 4.2% of waiver seekers but 14.3% of waivers granted. This suggests that the existing ASX Listing Rule framework is inadequate to deal with the challenges posed by these entities — which are a comparatively recent invention and were not contemplated when most of the listing rules were conceived.