

# ASIC bars Smiles Inclusive from capital raises, board overhaul attempt delayed



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After drawing the ire of a group of rogue shareholder dentists who believe their attempt to overhaul the board of Smiles Inclusive (ASX: SIL) was sullied by the issuance of 10 million new shares to undisclosed parties, the company has been dealt a new blow by the corporate watchdog.

Last night Smiles Inclusive announced it had received a determination from the Australian Securities and Investments Commission (ASIC) preventing the company from using a transaction-specific prospectus to raise capital until 19 October 2021.

The effective stop order will make it challenging for the embattled group to go ahead with an [\\$8 million capital raise designed to pay down debt to National Australia Bank \(ASX: NAB\)](#), which would

dilute an already eroded stake for shareholders by putting out 320 million new shares.

The twist comes as the Gold Coast-based company also faces a 10 November court hearing brought by ASIC over its inability to produce an audited financial report for the December 2019 half.

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## [ASIC files proceedings against Smiles Inclusive, director flies the coop](#)

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Requisitioning shareholders - who have their own sights on Smiles leadership roles - claim it is a state of affairs that led them to cancel an extraordinary general meeting (EGM) that was due to take place on 23 October to vote on the board's future.

However, the company itself claims proxy forms received were sufficient to "comprehensively defeat" the resolutions proposed had they been voted on at the meeting.

Smiles Inclusive has welcomed the cancellation request, describing the EGM as an "unnecessary and costly distraction" from efforts to turnaround the business, but lawyers of the protesting dentists have already sent a notice of intention to call another meeting no later than 21 December.

While the 10 million new shares announced on 15 October are only a small part of the capital raising Smiles has intended, they were enough to provoke fierce criticism from the rival faction led by Dr John Camacho, Dr Arthur Walsh and Dr Philip Makepeace.

The requisitioning shareholders alleged the shares were taken up by people associated with Smiles Inclusive, which if true could potentially sway the outcome of the EGM vote.

It is understood almost a third of those new shares were taken up by an entity associated with new non-executive director Genna Levitch, but this was not disclosed to the ASX and nor were the identities of any of the participants.

"Only when we insisted did Smiles provide us with a fresh copy of the current share register was Smiles reluctantly forced to make the ASX disclosure yesterday four weeks too late," Dr Camacho said the next day.

"Smiles self-preservation tactic represents a new low. That Smiles should stoop to such depths, a move that started on 21 September 2020 with the issue of 5.5 million new shares, marks a new battle ground."

"Furthermore, Smiles cynically failed to disclose this material fact to the ASX and Smiles shareholders as required by ASX continuous disclosure rules," added Dr Makepeace.

In a statement given to *Business News Australia* in the wake of these claims, Smiles Inclusive CEO Michelle Aquilina dismissed the dentists' allegations.

"The shares issued by Smiles were part of the capital raising program that Smiles has previously announced. This raising is for the purposes of funding the turnaround program adopted by Smiles' board, which is now seeing results," she said.

"The number of shares issued total approximately 6 per cent of the shares in the company. The proposition that the issuing of the shares was designed to defeat the resolutions to be proposed at the EGM on 23 October is simply not true.

"Smiles received the request for a copy of the register last week and complied with that request by providing a copy of the register in accordance with the timing set out in the Corporations Act," she said at the time.

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### [Statutory demand aims to wind up Smiles Inclusive](#)

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While Smiles Inclusive management is sceptical about the rogue shareholders' stated reasons for cancelling the EGM, yesterday they explained their reasons.

"As a result of Smiles concealment of the issue of new shares, Smiles refusal to provide an up-to-date copy of the share register ahead of the EGM, Smiles impending ASIC court case in November, Smiles repeated failures to deliver the audited interim accounts despite multiple promises (and now the full year overdue) and a half-baked capital raising announcement, we have reset the EGM clock. We are done with the smoke and mirrors," Dr Makepeace said.

"Smiles claims that it is now somehow miraculously profitable. A business that lost \$31 million last year FY19, leaked \$6 million hard operating cash in FY20 (pre-COVID impact) and only three weeks ago admitted that COVID has had a severe impact on the business."

Dr Walsh said the EGM would now be held in December, providing time for Smiles to deliver on its many outstanding promises and allow shareholders the chance to make a properly informed decision including the behaviours witnessed in recent days and weeks.

Dr Camacho also took aim at chairman David Usasz, who continues to distance himself from his early involvement at Smiles Inclusive on his LinkedIn profile.

"Mr Usasz, you co-founded Smiles in February 2017. You were not appointed a director in November 2019 as you claim. Take responsibility for your failures," Dr Camacho said.