

CHAPTER 5

NEW ISSUES AND QUOTATION OF SECURITIES

Chapter 5
Methods for Bringing Securities to Admission and Listing Application Procedures.

CHAPTER 5 - SCOPE OF CHAPTER
NEW ISSUES AND QUOTATION OF SECURITIES

This **Chapter** deals with new issues of * securities. Because of the complexity that often surrounds issues, listees are encouraged to discuss proposals with * APX before finalising them.

This **Chapter** also describes the procedures to be followed by a * listee when applying for a quotation for its * securities.

NEW ISSUES

ISSUES EXCEEDING 15% OF CAPITAL.

5.1.1 Without the approval of holders of *ordinary securities, a *listee must not issue or agree to issue more *equity securities than the number calculated according to the following formula.

$(A \times B) - C$

A= The number of *fully paid ordinary securities on issue 12 months before the date of issue or agreement:

- plus the number of *fully paid ordinary securities issued in the 12 months under an exception in **Rules 5.2(a) to (m)**;
- plus the number of *partly paid ordinary securities that became fully paid in the 12 months;
- plus the number of *fully paid ordinary securities issued in the 12 months with approval of holders of *ordinary securities under this **Rule**; and
- less the number of *fully paid ordinary securities cancelled in the 12 months.

B= 15%

C= The number of *equity securities issued or agreed to be issued in the 12 months before the date of issue or agreement to issue *but not* under an exception in **Rules 5.2(a) to (m)** or with approval under this **Rule**.

5.1.2 In working out the number of *equity securities that an entity may issue or agree to issue, and the number of *equity securities in "C", the following **Rules** apply:

- (a) If the *equity securities are *fully paid ordinary securities, each *security is counted as one.
- (b) If the *equity securities are *convertible into *ordinary securities or are *partly paid securities, each *security is counted as the maximum number of *fully paid ordinary securities into which it can be converted or paid up.
- (c) In any other case, each *security is counted as *APX decides.

5.1.3 This **Rule** applies regarding issues of *equity securities or agreements to issue *equity securities.

- (a) An agreement to issue *equity securities that is conditional on holders of *ordinary securities approving the issue before the issue is made is not treated as an agreement. If a *listee relies on this **Rule** it must not issue *equity securities without approval.
- (b) In working out if there is an issue of *equity securities the sale or reissue of forfeited *equity securities is treated as an issue of *equity securities.

5.1.4 In working out the number of *fully paid ordinary securities on issue 12 months before the date of issue or agreement in "A", if first quotation of the *listee's securities occurred less than 12 months before the date of issue or agreement, the number of *securities is the number of fully paid *ordinary securities on issue on the date of first *quotation.

Exceptions to **Rules 5.1.1 to 5.1.4.**

5.2 **Rules 5.1.1 to 5.1.4** do not apply in any of the following cases:

- (a) An issue to holders of *ordinary securities made under a *pro rata issue and to holders of other *equity securities to the extent that the terms of issue of the *equity securities permit participation in the *pro rata issue.

Note: An issue is still treated as a *pro rata issue under this **Rule** if offers are not sent to overseas *security holders under **Rules 5.5.1 to 5.5.2.**

Cross reference: **Rules 4.25.1 and 4.25.2.**

- (b) An issue under an underwriting agreement to an underwriter of a *pro rata issue to holders of *ordinary securities if the underwriter receives the *securities within 15 *business days after the close of the offer.
- (c) An issue to make up the shortfall on a *pro rata issue to holders of *ordinary securities. The *listee must make the issue within 3 months after the close of the offer, and the *directors of the *listee must have stated as part of the offer that they reserve the right to issue the shortfall at their discretion. The issue price must not be less than the price at which the *securities were offered under the *pro rata issue.
- (d) An issue on the *conversion of *convertible securities. The *listee must have issued the *convertible securities before it was listed or complied with the *Listees' Listing Standards when it issued the *convertible securities.

Note: The definition of *convertible securities includes options.

- (e) An issue under a *takeover that is required to comply with the *Act or under a merger by way of scheme of arrangement under the *Act.
- (f) An issue to fund the cash consideration in any of the following circumstances if the terms of the issue are disclosed in the *takeover or scheme documents:
- (i) A off-market bid that is required to comply with the Act, when the offer becomes unconditional;
- (ii) A market bid that is required to comply with the *Act, when the announcement is made under the *Act; or
- (iii) A merger by way of scheme of arrangement under the *Act, when the arrangement is approved by the court under the *Act.
- (g) An issue under a dividend or distribution plan, excluding an issue to the plan's underwriters. This **Rule 5.2(g)** is only available in the following cases:
- (i) In the case of a plan that was established *before* the *listee was listed - a summary of the plan's terms was set out in the prospectus, information memorandum or Product Disclosure Statement; and
- (ii) In the case of a plan that was established after the *listee was listed - the plan's terms were approved by holders of *ordinary securities.

Chapter 5

Methods for Bringing Securities to Admission and Listing Application Procedures.

- (h) An issue under an *employee incentive scheme that was established within 3 years before the date of the issue. This **Rule 5.2(h)** is only available in the following cases:
 - (i) In the case of a scheme established *before* the entity was listed - a summary of the terms of the scheme were set out in the prospectus, information memorandum or Product Disclosure Statement; and
 - (ii) In the case of a scheme established *after* the *listee was listed - the scheme was approved by holders of *ordinary securities.
- (i) An issue under an *employee incentive scheme that was established more than 3 years before the date of the issue. This **Rule 5.2(i)** is only available if in the case of a scheme established before the entity was listed a summary of the terms of the scheme were set out in the prospectus, information memorandum or product disclosure statement and holders of *ordinary securities have approved the issue of *securities under the scheme as an exception to this **Rule** no more than 3 years before the date of issue. The notice of meeting must have included each of the following:
 - (i) A summary of the terms of the scheme;
 - (ii) The number of *securities issued under the scheme since the date of the last approval; and
 - (iii) A *voting exclusion statement.
- (j) An issue of *preference securities which do not have any rights of *conversion into another *class of *equity security. The *preference securities must comply with **Chapter 4**.
- (k) The reissue or sale of forfeited securities within 6 weeks after the day on which the call was due and payable.
- (l) An issue on the exercise of options to an underwriter of the exercise. This **Rule 5.2(l)** is only available if each of the following applies:
 - (i) The *listee complied with the *Listees' Listing Standards when it issued the options;
 - (ii) The underwriter receives the *underlying securities within 10 *business days after expiry of the options; and
 - (iii) The underwriting agreement was disclosed under **Rule 8.10(b)**.
- (m) An issue under an agreement to issue *securities. The *listee must have complied with the *Listees' Listing Rules when it entered into the agreement to issue the *securities.

RIGHTS ISSUE.

5.3.1 A rights issue is an offer to existing holders of *securities to subscribe or purchase further *securities in proportion to their holdings.

5.3.2 In relation to a rights issue, *APX may grant admission to *quotation of the rights. On exercise of the rights and issue of the underlying *securities those underlying *securities will

Chapter 5

Methods for Bringing Securities to Admission and Listing Application Procedures.

be admitted to * quotation without any need for further application for admission of those * securities.

5.3.3 The following must be notified to the * APX Announcements Office without delay:

- (a) the issue price and principal terms of the issue;
- (b) the results of the issue and, if any rights not taken up are sold, details of the sale; and
- (c) if relevant, the number or amount of any * securities issued pursuant to any excess applications together with the basis of any acceptance of those applications.

5.3.4 In a rights issue:

- (a) the offer must remain open for acceptance for at least 21 days; and
- (b) the * circular must contain a table of market values for the * securities of the * class to which the rights issue relates for the first dealing day in each of the six months before the date of the * circular, for the last dealing day before the announcement of the rights issue and (if different) the latest practicable date prior to dispatch of the * circular.

5.3.5 The basis for deciding a pro rata issue must not change during the offer period.

5.3.6 The issue price of each * security must not contain a fraction of a cent.

5.3.7 The ratio of * securities offered must not be greater than one * security for each * security held.

5.3.8 The prospectus or Product Disclosure Statement may allow offerees to subscribe for a greater number of * securities than their entitlement only if subscription in excess of entitlements are made out of the shortfall and, for a renounceable offer, the * listee complies with **Rule 5.9.1**.

5.3.9 A * director of the * listee will not be permitted to subscribe for or purchase excess * securities without those * securities being offered to other existing holders on the same terms.

5.3.10 The offer must not include alternatives, except to allow full or part payments on acceptance.

5.3.11 If it is an offer for more than one * security, the * listee must issue separate certificates (if certificated).

NO ISSUE WITHOUT APPROVAL BEFORE A MEETING TO APPOINT DIRECTORS, RESPONSIBLE ENTITY OR TRUST MANAGER.

5.4.1 A * listee must not issue any * equity securities without the approval of the holders of its * ordinary securities if the holders or beneficial owners of more than 50% of the * ordinary securities advise the * listee in writing that the holders or beneficial owners intended to call a general meeting to appoint or remove * directors (if the * listee is a trust, to appoint or remove a * responsible entity or * management company).

5.4.2 This restriction applies for 2 months after the date of the advice, but does not prevent an issue under a written contract entered into before the * listee received the advice.

5.4.3 If the person giving the advice is not a member, the advice must be accompanied by a statutory declaration from the holder verifying the person's beneficial ownership.

* See Chapter 1 for defined terms.

ISSUES TO AUSTRALIAN AND OVERSEAS HOLDERS.

- 5.5.1** If a *listee proposes a *pro rata issue, it must offer the *securities to all holders with registered addresses in Australia.
- 5.5.2** A *listee must also offer the *securities to all holders with registered addresses *outside* Australia. However, this **Rule** does not apply in relation to a particular place if each of the following conditions is met:
- (a) The *listee decides that it is unreasonable to make the offer having regard to each of the following:
 - (i) The number of holders in the place where the offer would be made;
 - (ii) The number and value of *securities the holders would be offered; and
 - (iii) The cost of complying with the legal requirements, and requirements of a regulatory authority, in the place.
 - (b) The *listee sends each holder to whom it will not offer the *securities details of the issue and advice that the *listee will not offer *securities to the holder; and
 - (c) In the case of a renounceable *pro rata issue, the *listee also does each of the following:
 - (i) Appoints a nominee to arrange for the sale of the entitlements that would have been given to those holders and to account to them for the net proceeds of the sale; and
 - (ii) Advises each holder not given the entitlements that a nominee in Australia will arrange for sale of the entitlements and, if they are sold, for the net proceeds to be sent to the holder.

ISSUES UNDER A DIVIDEND OR DISTRIBUTION PLAN.

- 5.6.1** A *listee may only make an issue under a *dividend or distribution plan if each of the following conditions contained in **Rules 5.6.2** and **5.6.3** are met.
- 5.6.2** The *securities rank equally with a *class of *quoted securities (ignoring the fact that they do not rank equally for the next dividend – or in the case of a managed investment scheme, the next distribution - and any right to participate in a concurrent offer).
- 5.6.3** The plan allows participants to choose whether to participate for part or all of their holdings. However, the plan may limit participation on the following terms:
- (a) the limit is a number of *securities, or a sum of money, that is the same for all holders (except a trustee or a nominee); and
 - (b) if the *securities are held by a trustee or nominee, the trustee or nominee must be allowed to participate for each person whose *securities are held in that way.

NOTIFICATION OF TAKEOVER OFFER.

- 5.7.1** A *listee must not issue or agree to issue *equity securities, without the approval of holders of *ordinary securities, for 3 months after it is advised in writing that a person is making, or proposes to make, a *takeover for *securities in it. This **Rule** does not apply to an issue or agreement to issue in any of the following cases contained in **Rules 5.7.1(a) to (e)**.

Chapter 5

Methods for Bringing Securities to Admission and Listing Application Procedures.

Cross reference: **Rule 5.1.1 to 5.1.4** allows issues of up to 15%. However this **Rule** stops any issue except as provided in it.

- (a) An issue notified to *APX before the *listee was advised, or made under an agreement to issue notified to *APX before the *listee was advised.
- (b) A *pro rata issue to holders of *ordinary securities.
- (c) An issue made on the exercise of rights of *conversion.
- (d) An issue made under a *takeover that is required to comply with the *Act or a merger by way of scheme of arrangement under the *Act.
- (e) An issue made under a *dividend or distribution plan that is in operation at the time the notice is received.

NO INTERFERENCE ETC WITH ISSUE OF SECURITIES.

5.8 A *listee must not in any way prevent, delay or interfere with an issue of *securities following the exercise, *conversion or paying up of a *quoted security. If the *listee would break an Australian law by issuing the *securities to the holder of the *quoted securities, it may issue them to a nominee. The nominee must *dispose of the *securities and send the net proceeds to the person who would have received them.

RULES THAT APPLY TO ALL ENTITLEMENTS ISSUES.

5.9.1 In the case of an offer that is not pro rata, or an offer to which **Rules 5.3.8** or **5.11.2** apply, the *listee must accept evidence of entitlement constituted by a contract note endorsed by an *APX broker to show that the *securities have been acquired on a “cum” basis. The *listee must make application forms available to those buyers to complete and return.

5.9.2 If a *listee is undertaking more than 1 *corporate action, it must not have a *record date to identify holders entitled to participate in a subsequent one until it has updated its register in relation to the preceding one.

Example: Following a *bonus issue, the *listee must have entered the *bonus securities into the register, and issued certificates in relation to its register, before the *record date for determining those entitled to a proposed pro rata issue.

5.9.3 A *listee must not have a *record date for any purpose until at least 6 *business days after its last *record date. This **Rule** does not prevent a *listee having identical *record dates for different purposes.

5.9.4 If a *listee must get the approval of holders of *ordinary securities to make an offer, or issue *securities, the *record date to decide entitlements must be at least 7 *business days after the date of the meeting.

RULES THAT APPLY TO ISSUES OF OPTIONS.

5.10 A *listee must not issue options if it would have more options on issue than *underlying securities.

RULES THAT APPLY TO ANY ISSUE IN A DIFFERENT ENTITY.

5.11.1 If a *listee offers its *security holders an entitlement to *securities in another *listee, the offers must be *pro rata, or made in another way that, in *APX's opinion, is fair in all the circumstances. There must be no restriction on the number of *securities which a holder must hold before the entitlement accrues. This **Rule** does not apply if the resulting holding would be less than a holding with a value of \$500 and no facility to round up is offered.

Cross reference: **Rule 10.14.1.**

5.11.2 If subscriptions in excess of entitlements are allowed, the *listee must comply with **Rule 5.9.1.**

5.11.3 The *record date to decide entitlements must be at least 7 *business days after the prospectus, product disclosure statement or information memorandum is given to *APX.

NEW LISTEES AND DISCLOSURE OF ADVISERS' INTERESTS.

5.12 If following an offer for sale, offer for subscription, or offer by a new *listee; any of the new *listee's advisers or any intermediary, becomes interested in 3% or more of any *class of *securities being marketed, the interest must be notified to *APX's Announcements Office before dealings in the *securities commence. For this purpose, an adviser or intermediary is interested in any *securities held by an underwriting agreement in the group of companies to which it belongs but is not interested in any *securities held on behalf of bona fide clients by any company in the group of companies to which it belongs. In assessing the percentage size of the interest, the *securities being marketed are to be treated as having already been issued.

ADMISSION.

5.13.1 Admission of any *securities becomes effective only when the decision of *APX to admit the *securities to quotation has been announced by being either:

- (a) disseminated by the electronic systems designated by *APX for this purpose; or
- (b) if the decision is made at a time when, in the opinion of *APX, those electronic systems are not available for any reason, posted on a notice board designated by *APX for this purpose. In this case *APX will cause the decision to be disseminated forthwith upon the electronic systems next becoming available.

5.13.2 The *APX will not, save in exceptional circumstances, admit *securities to quotation until each of the items referred to in **Rule 5.16** have been lodged. Failure to comply fully with **Rule 5.16** may delay consideration of the application.

48 HOUR DOCUMENTS.

5.14 The following documents (“**the 48 hour documents**”) must be lodged in final form with *APX (marked for the attention of *Listing Applications Department) no later than midday at least two business days prior to consideration of the application for admission to *quotation. Failure to comply may delay consideration of the application:
APPLICATION FORM.

- (a) Unless already submitted to *APX under **Rule 6.4(c)**:

Chapter 5

Methods for Bringing Securities to Admission and Listing Application Procedures.

- (i) a declaration in the appropriate form issued by *APX (see **Appendices 4-1** and **4-2**) signed by a duly authorised officer of the *listee; and
- (ii) payment of the appropriate fees calculated in accordance with *APX's scale of fees for the time being in force.

LISTING PARTICULARS ETC.

- (b) Two (or, in the case of a new applicant, eight) copies of the *listing particulars, *circular or other document relating to the issue, satisfying all relevant requirements for the contents of such documents together with, where applicable, copies of any notice of meeting referred to in such documents. In the case of an application in respect of *securities of a *class not already listed, one of the copies of the *listing particulars must be signed and dated by every *director and proposed *director of the *listee, or by his agent or attorney and lodged with a certified copy of the authority of any such agent or attorney.

BOARD RESOLUTION.

- (c) A copy of the resolution of the *board of the *listee authorising the issue of *securities.

ADDITIONAL DOCUMENTS FOR NEW LISTEE.

- (d) In the case of a new *listee:
 - (i) a copy of the certificate of incorporation or equivalent document;
 - (ii) a letter of compliance in respect of the *constitution as described in **Chapter 13**. If security holder approval to any necessary alteration cannot be obtained before the hearing of the application for admission to *quotation, *APX may accept an undertaking to alter these documents to comply with the requirements of **Chapter 13** at the earliest possible opportunity; and
 - (iii) if requested by *APX, where any corporate security holder holds 5% or more of the issued *equity securities, a declaration by a duly authorised officer of that corporate security holder, giving details of its registered office, directors, security holders and such other details as *APX shall require.

TRUST DEED LETTER OF COMPLIANCE.

- (e) In the case of *fixed interest securities, a letter of compliance in respect of the trust deed as described in **Chapter 13**.

ITEMS TO BE LODGED ON THE DAY.

5.15 [deleted]

DOCUMENTS TO BE LODGED LATER.

5.16 The following documents (where relevant) must be lodged with *APX (marked for the attention of *Listing Application department) as soon as practicable after the consideration of the application for admission to *quotation and in any event no later than five *business days after they become available:

* See Chapter 1 for defined terms.

Chapter 5

Methods for Bringing Securities to Admission and Listing Application Procedures.

- (a) a statement of the number of * securities which were in fact issued and, where different from the number which were the subject of the application, the aggregate number or value of * securities of that * class on issue;
- (b) a written request for reimbursement of fees due if the number of such * securities issued is less than the number which was the subject of the application; and
- (c) a declaration, in the form issued by * APX as set out in **Appendix 5-1**, given by a duly authorised officer of the * listee.

ADDITIONAL DOCUMENTS.

5.17 The * APX may, at any time before or after the admission to * quotation, require the * listee to produce to * APX a copy of any of the following:

- (a) any agreement to acquire any assets, business or shares in consideration for or in relation to which the * listee's * securities are being issued; and
- (b) any letter, report, * valuation, contract or other documents referred to in the * listing particulars or other * circular or document issued in connection with those * securities;

and the * listee must retain copies of such documentation for not less than seven years so that it can comply with any such request from * APX.

COMPLIANCE WITH TIMETABLES.

5.18 A * listee must comply with **Appendix 6-4**.