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## 17. TRANSACTIONS WITH RELATED PARTIES

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*Chapter 17 sets out requirements for the issue or agreement to issue equity securities to a related party, exceptions to the general rule and rules relating to the acquisition and disposal of significant assets.*

### Acquisition of securities in the listee

#### Approval for an issue or agreement

- 17.1 Subject to **Rule 17.2**, holders of **ordinary securities** must approve the issue by a **listee** of, or an agreement for a **listee** to issue, **equity securities** to any of the following persons:
- (a) a **related party**; or
  - (b) a person **APX** considers sufficiently related to the **listee** that approval of holders of ordinary securities is required.

#### Exceptions to Rule 17.1

- 17.2 The approval of holders of **ordinary securities** is not required for the issue by a **listee**, or an agreement for a **listee** to issue, **equity securities** to a person described in **Rule 17.1** where:
- (a) the **securities** are received pursuant to a **pro rata issue** (including after applying **Rule 8.13**).
  - (b) the **securities** are received under an underwriting agreement in relation to a **pro rata issue** where the terms were disclosed in the offer documents for the **pro rata issue**.
  - (c) the **securities** are received under a **dividend or distribution plan** where the plan has no limits on a **security holder's** ability to participate in the plan.
  - (d) the person is a person referred to in **Rule 17.4** and receives the **securities** under an **employee incentive scheme** with approval under **Rule 17.4**.
  - (e) the **securities** are received under a **takeover** that was required to comply with the **Act**.
  - (f) the person is a **related party** by reason only of the transaction which is the reason for the issue of the **securities** and the application to it of section 228(6) of the **Act**.
  - (g) the **securities** are received on the conversion of **convertible securities**, where the issue of **convertible securities** complied with these **Rules** at the time of issue.
  - (h) an issue of **securities** (other than to an underwriter to the offer) under a security purchase plan where:
    - (i) offers are made to holders of **ordinary securities** in an amount not exceeding \$15,000 in value;
    - (ii) the exception in this **Rule 17.2** is relied on only once in any 12 month period;

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- (iii) the number of **securities** to be issued does not exceed the number that is 30% of the total number of fully paid **ordinary securities** on issue before the offer; and
  - (iv) the issue price of the **securities** is not less than 20% below the average **market price** for **securities** in that **class**, calculated over the last 5 **business days** on which sales in the **securities** were recorded before the **business day** on which:
    - (A) the issue was announced;
    - (B) the issue was made; or
    - (C) the offer closed.

Note: Relief from **ASIC** may be required to make offers of securities under a security purchase plan with a **security offer document**.

- (i) the **securities** are received under an agreement where the **listee** complied with these **Rules** at the time it entered into the agreement.
- (j) an agreement to issue **equity securities** that is conditional on holders of **ordinary securities** approving the issue before the issue is made. If a **listee** relies on this exception it must not issue the **equity securities** without the approval of holders of **ordinary securities**.

#### **Requirements for the notice of meeting under Rule 17.1**

- 17.3 The notice of meeting to approve the issue of **securities** under **Rule 17.1** must include the following:
- (a) the name of the person to be issued the **securities**;
  - (b) the number of **securities** to be issued, being either:
    - (i) if known, the maximum number of **securities** to be issued; or
    - (ii) the formula for calculating the number of **securities** to be issued;
  - (c) a statement that the **securities** will be issued by the **listee** within one month of the date of the meeting;
  - (d) a description of the **listee's** relationship with the person to be issued the **securities**;
  - (e) the issue price of each **security** and the aggregate issue price;
  - (f) a description of the terms of the issue;
  - (g) the proposed use of the subscription funds; and
  - (h) a **voting restriction statement**.

Cross-reference: **Rule 8.5(n)**, which requires an additional statement in the notice of meeting in order to rely on that exception.

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## Approval required to acquire securities under an employee incentive scheme

- 17.4 Holders of **ordinary securities** must approve the issue by a **listee** of **equity securities** under an **employee incentive scheme** to any of the following persons:
- (a) a director of the **listee**;
  - (b) an associate (as defined in sections 11, 13 and 17 of the **Act** (as if section was not confined to Chapter 7 of the Act)) of a director of the **listee**; and
  - (c) a person **APX** considers sufficiently related to the **listee** that approval of holders of ordinary securities is required.

## Requirements for notice of meeting under Rule 17.4

- 17.5 The notice of meeting to approve an issue of **securities** for the purposes of **Rule 17.4** must include the following requirements:
- (a) the name of the person to be issued the **securities**;
  - (b) the number of **securities** to be issued, being either:
    - (i) if known, the maximum number of **securities** to be issued; or
    - (ii) the formula for calculating the number of **securities** to be issued;
  - (c) a description of the **listee's** relationship with the person to be issued the **securities**;
  - (d) the issue price of each **security** and the aggregate issue price, or the formula for calculating the price;
  - (e) a description of the terms of the issue;
  - (f) details of:
    - (i) all persons referred to in **Rule 17.4** who received **securities** under the **employee incentive scheme** since the last approval;
    - (ii) the number of the **securities** received; and
    - (iii) the acquisition price for each **security**;
  - (g) the terms of any loan in relation to the **employee incentive scheme**;
  - (h) a statement that the **securities** will be issued by the **listee** within either:
    - (i) one year of the date of the meeting; or
    - (ii) three years of the date of the meeting and details of any **securities** issued under the **employee incentive scheme** will be published in the **listee's annual report**; and
  - (i) a **voting restriction statement**.

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## Acquisition and disposal of significant assets

### Approval required if test met

- 17.6 Subject to **Rule 17.8**, holders of **ordinary securities** must approve a **listee** (in the case of a **managed investment scheme**, a **responsible entity**) or a **controlled entity**:
- (a) **acquiring** a **significant asset** from; or
  - (b) **disposing** of **significant asset** to,  
any of the following persons:
    - (c) a **related party**;
    - (d) a **controlled entity**;
    - (e) a **substantial holder**, if the person and the person's associates (as defined in section 12 of the **Act**) have a relevant interest, or had a relevant interest at any time in the 6 months before the transaction, in at least 10% of the total votes attached to the **listee's securities**;
    - (f) an associate (as defined in sections 11, 13 and 17 of the **Act** (as if section was not confined to Chapter 7 of the Act)) of a person referred to in **Rules 17.6(c)**, **17.6(d)** or **17.6(e)**; or
    - (g) a person **APX** considers sufficiently related to the **listee** that approval of holders of ordinary securities is required.
- 17.7 **APX** may require a **listee** to undertake action or refrain from taking action set out in **Rule 17.12** if the **listee** is in breach of **Rule 17.6**.

### Exceptions to Rule 17.6

- 17.8 The approval of holders of **ordinary securities** is not required under **Rule 17.6** where:
- (a) the transaction is between the **listee** and a wholly owned **controlled entity**;
  - (b) the transaction is between wholly owned **controlled entities** of the **listee**;
  - (c) the **listee** is issuing **securities** for cash;
  - (d) in the case of a **managed investment scheme**, the transaction involves a **significant asset** that was not beneficially held for the **managed investment scheme** before the transaction and is not beneficially held for the **managed investment scheme** after the transaction; and
  - (e) the transaction is between the **listee** and a person who is a **related party** by reason only of the transaction and the application to it of section 228(6) of the **Act**.

### Application of Rule 17.6 to options

- 17.9 For the purposes of **Rule 17.6**, where the **acquisition** or **disposal** involves the grant or exercise of an option, the following apply:
- (a) the consideration is the sum of the issue price of the option and its exercise price.

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- (b) an agreement to issue **equity securities** that is subject to a condition that holders of **ordinary securities** approve the issue, is not treated as an agreement. However, a **listee** must not issue the **equity securities** unless an exception in Rule **8.5** applies.
  - (c) an agreement to issue an option that is subject to a condition that holders of its **ordinary securities** approve the issue, must be approved as soon as practicable after the agreement to issue the option is entered into.

Example: When issued, where the sum of the issue price and the exercise price of the option did not exceed 5% of **equity interests**, approval is not required. At the time of exercise, where the sum of the issue price and the exercise price of the option does exceed 5% of **equity interests**, approval is then required before the option is exercised.

### **Unproven assets**

- 17.10 If **Rule 17.6** applies to an acquisition that involves an **unproven asset**, the consideration must be **restricted securities** and **Chapter 21** must be complied with, unless the consideration is reimbursement of expenditure incurred in developing the **unproven asset**.

### **Consultation with APX on the application of Rule 17.6**

- 17.11 A **listee** may seek confirmation from **APX** on whether approval is required under **Rule 17.6** for a proposed **acquisition** or **disposal**. The **listee** must give **APX** full details of the transaction and **APX** will not be bound by a confirmation if the details given to it are materially changed at the time of the transaction.

### **Actions that APX may require a listee to take**

- 17.12 **APX** may require a **listee** to take action or refrain from actions being:
- (a) terminating the transaction (or arranging for its termination) or take such measures to the effect of reversing the transaction where practicable; or
  - (b) seeking the approval of holders of **ordinary securities** to the transaction on the condition that if approval is not obtained, the **listee** must terminate the transaction (or arrange for its termination).

### **Requirements for the notice of meeting under Rule 17.6 or 17.12(b)**

- 17.13 The notice of meeting for the approval of holders of **ordinary securities** under **Rules 17.6** and **17.12(b)** must include:
- (a) a report on the transaction from an independent expert stating whether the transaction is fair and reasonable to holders of **ordinary securities** with the expert's opinion displayed prominently on the notice of meeting and on any explanatory documents sent to holders of **ordinary securities**; and
  - (b) a **voting restriction statement**.