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## 21. RESTRICTED SECURITIES

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*Chapter 21 sets out the rules with respect to restricted securities issued by a listee.*

### Restrictions on dealing

- 21.1 **Restricted securities** may not be disposed of for a specified time (*escrow period*). The restriction may be enforced by the holder of **restricted securities** and where the **restricted securities** are certificated, the restriction can be enforced by giving them to a **bank** or **recognised trustee** to hold in escrow.
- 21.2 Where a **listee** does not issue paper certificates and settles through an **approved settlement facility**, they are not bound by the provisions of this chapter that deal with paper certificates.

### Entry into restriction agreements and application of restrictions

- 21.3 A **listee** which issues **restricted securities**, or has them on issue, must enter into a **restriction agreement** with the **security holder** and each **controller**. However, a **controller** need not be a party to the agreement if any of the following applies:
- (a) the value of the **restricted security** is less than 10% of the total assets of any of the following:
    - (i) the holder of the **restricted securities**; or
    - (ii) an intermediate entity through which the **controller** has its interests.
  - (b) the holder or an intermediate entity through which the **controller** has its interests, is one of the following:
    - (i) an entity listed on **APX** or any other Australian exchange or foreign exchange; or
    - (ii) a trustee or nominee.
  - (c) the holder is a person whose **securities** are **restricted securities** because of the application of category 2, 4 or 6 of **Appendix 21-2**.
- Cross-reference: **Chapter 21, Appendix 21-2**.
- 21.4 A **restriction agreement** must be in accordance with **Appendix 21-1**, or as **APX** requires in a particular case.
- 21.5 Subject to **Rule 21.6**, a **listee** which issues **restricted securities**, or has them on issue, must apply the restrictions in **Appendix 21-2** or other restrictions as **APX**, in its discretion, decides.
- 21.6 Unless **APX** decides otherwise, the restrictions in categories 1, 2, 3, 4, 7, 8 and 9 of **Appendix 21-2** do not apply in relation to any of the following **listees**:
- (a) A **listee** that has a track record of profitability or revenue acceptable to **APX**; and
  - (b) A **listee** that, in the opinion of **APX**, has a substantial proportion of its assets as tangible assets or assets with a readily ascertainable value.

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## Timing

- 21.7 A **listee** must provide all **restriction agreements** to **APX** before any person gets the **restricted securities** or any rights in relation to them are issued or transferred to or received by the intended **security holder** or **controller**. This **Rule 21.7** does not prevent the person getting the right to receive **restricted securities** on condition that **restriction agreements** are entered into.

Cross-reference: **Appendix 21-1**.

## Enforcement

- 21.8 A **listee** must comply with, and enforce, a **restriction agreement**, and enforce its **constitution**, to ensure compliance with the requirements for **restricted securities**.

## Escrow of restricted securities

- 21.9 A **listee** must get a **bank's** or **recognised trustee's** undertaking to hold the certificate of a **restricted security** for the escrow period, and not release the certificate without **APX's** written consent. The **listee** must give the undertaking to **APX** within 2 **business days** after the issue of the **restricted securities**.

## Changes of restrictions during escrow period

- 21.10 During an escrow period, the **listee** must not:
- (a) amend an executed **restriction agreement**; or
  - (b) ask for, or agree to, release of a certificate held in escrow by a **bank** or **recognised trustee** if a paper certificate is on issue.

## Certificates for restricted securities

- 21.11 A **listee** that issues paper certificates must issue certificates for all **restricted securities**. The certificate must state:
- (a) that the **securities** are **restricted securities**;
  - (b) that the **securities** are not quoted on **APX**; and
  - (c) the date on which they will cease to be **restricted securities**.

## Deposit of the certificates for additional restricted securities

- 21.12 A **listee** must deposit new certificates for any additional **restricted securities** with the **bank** or **recognised trustee** which holds the certificates for the initial **restricted securities**. The **listee** must give **APX** an undertaking from the **bank** or **recognised trustee** undertaking to hold the certificates for the additional **restricted securities** for the escrow period, and not release the certificates without **APX's** written consent within 2 **business days** after additional **restricted securities** are issued.

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### Noting restricted securities in securities register

21.13 A **listee** must identify in its **securities** register any **securities** that are **restricted securities**.

### Requirement for APX's consent to sale of restricted securities in a takeover or merger

21.14 To enable the holder of **restricted securities** to accept an offer under a **takeover** (other than a **scheme of arrangement**) or to enable **restricted securities** to be transferred or cancelled as part of a merger by way of a **scheme of arrangement**, **APX** may consent to the **bank** or **recognised trustee** releasing the certificates.

### Conditions for consent to sale of restricted securities in a takeover or merger

21.15 **APX** will not consent under **Rule 21.14** unless, to the extent to which they are applicable, all of the following conditions are met:

- (a) in the case of a **takeover** (other than a **scheme of arrangement**);
  - (i) the offers are for all of the ordinary securities and, if the restricted securities are not ordinary securities, all the securities in the same class as the restricted securities;
  - (ii) holders of at least half of the **securities** that are not **restricted securities** to which the offers relate have accepted;
  - (iii) if the offer is conditional, the offeror and the **security** holder agree in writing that the certificates will be returned to the **bank** or **recognised trustee**, for each **restricted security** that is not bought by the offeror under the offer; and
- (b) in the case of a merger by way of a **scheme of arrangement**, the **security holder** and the **listee** in which the **restricted securities** are held agree in writing that the certificates will be returned to the **bank** or **recognised trustee**, if the merger does not take effect.