
6. RIGHTS AND OBLIGATIONS ATTACHED TO SECURITIES

Chapter 6 sets out the rights and obligations of a listee with respect to both quoted and unquoted securities.

Equity securities

Ordinary securities

- 6.1 A **listee** may only have one **class** of **ordinary securities**, unless:
- (a) **APX** approves the terms of an additional **class**; or
 - (b) the additional **class** is of **partly paid securities** which, if fully paid, would be in the same **class** as the **ordinary securities**.

APX satisfied that terms appropriate

- 6.2 **APX** must be satisfied that the terms that apply to each **class** of **equity securities** are appropriate and fair taking into account voting and other rights.

Voting rights - show of hands

- 6.3 On a resolution to be decided on a show of hands, each holder of an **ordinary security**, and each holder of a **preference security** who has a right to vote, must be entitled to one vote. The **listee's constitution** may provide that a proxy is entitled to vote on a show of hands and must allow a proxy to vote on a poll.

This **Rule 6.3** does not apply to **securities** of a **managed investment scheme**.

Voting rights - on a poll

- 6.4 Where a resolution is to be decided on a poll, each:
- (a) holder of an **ordinary security**; and
 - (b) holder of a **preference security** who has a right to vote,
- must be entitled to:
- (c) one vote for each fully paid **security**; and
 - (d) a fraction of a vote for each **partly paid security**, where the fraction is equivalent to the proportion which the amount paid (not credited) is of the total amounts paid and payable (excluding amounts credited), ignoring amounts paid in advance of a call.

This **Rule 6.4** does not apply to **securities** of a **managed investment scheme**.

Limits on removing or changing voting and dividend rights

- 6.5 A **security holder's** right to vote, or receive dividends (or in the case of **managed investment schemes**, distributions), in respect of particular **equity securities** must not be removed or changed by a **listee** except where:
- (a) calls due and payable on those **securities** have not been paid;
 - (b) in the case of the voting rights:
 - (i) the proxy appointment in respect of those **securities** has not been deposited in accordance with the **listee's constitution**;
 - (ii) the person became the holder of those **securities** after the time determined under the **Act** as the time for deciding who held **securities** for the purposes of the meeting;
 - (c) Australian legislation operates to remove or change the right, or a rule in the **listee's constitution** operates to remove or change the right where that rule must be included to comply with Australian legislation;
 - (d) a rule in the **listee's constitution** that operates to remove or change the right and the rule:
 - (i) is permitted by these **Rules**, including a rule relating to **restricted securities**; or
 - (ii) has been approved by **APX**:
 - (A) having regard to requirements imposed on the **listee** under Australian law; or
 - (B) as appropriate and equitable; or
 - (e) an order of a court removes or changes the right.

Dividends and bonus issues

- 6.6 A **partly paid security** must not entitle the holder to a greater proportion of:
- (a) a dividend (or in the case of a **managed investment scheme**, distribution); or
 - (b) an issue of **bonus securities**,
- than the proportion which the amount paid (not credited) is of the total amounts paid and payable (excluding amounts credited). Amounts paid in advance of a call are ignored when calculating the proportion.

This **Rule 6.6** does not apply in respect of a dividend on a **partly paid security** in a no liability company.

Divestments only in limited circumstances

- 6.7 A **security holder** must not be divested of any **equity security** except where:
- (a) the **listee's constitution** contains a rule permitting divestment and that rule must be included to comply with Australian legislation.

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- (b) the **listee's constitution** contains a rule that **APX** has approved.
 - (c) a court orders the divestment.
 - (d) a lien permitted by these **Rules** allows the divestment.

Liens

- 6.8 A **listee** may only have a lien (including one that extends to reasonable amounts for interest and expenses incurred because of an unpaid amount) over **equity securities**, or over dividends (in the case of a **managed investment scheme**, distributions) it pays on them, where:
- (a) an unpaid call or instalment is due in respect of those **securities** but remains unpaid;
 - (b) the **listee** is owed an amount in respect of the holder **acquiring** those **securities**, where the **securities** were **acquired** under an **employee incentive scheme**; or
 - (c) the **listee** is required by law to pay an amount relating to the **securities** of a holder or deceased former holder.

Preference securities

Voting rights

- 6.9 Subject to compliance with any provision of the **Act** regulating voting rights of members of a **managed investment scheme**, the holder of a **preference security** must only be entitled to a right to vote:
- (a) when a dividend or distribution (or part of a dividend or distribution) is in arrears in respect of a **security**;
 - (b) on a resolution relating to a reduction of the share capital of a **listee**;
 - (c) on a resolution relating to a buy-back agreement;
 - (d) on a resolution that affects rights attached to the **security**;
 - (e) on a resolution for the **listee** to be wound up;
 - (f) on a resolution for the **listee** to dispose of the whole of the its business and undertaking; and
 - (g) during the winding up of the **listee**.

Preference securities that are not shares

- 6.10 The terms of issue of a **preference security** that is not a share must contain rights for the **security holder** to vote in the same manner as set out in **Rule 6.9**, with any necessary adaptation having regard to the form of the **preference security**.

This **Rule 6.10** does not apply to **securities** of a **managed investment scheme**.

Rights to dividends or distributions

- 6.11 The holder of a **preference security** must have a right to a dividend or distribution at, in **APX's** opinion, a commercial rate in preference to holders of **ordinary securities**.

Rights on return of capital

- 6.12 When a **listee** is wound up, the holder of a **preference security** must have a right to the return of capital (in the case of a **managed investment scheme**, interests) in preference to holders of **ordinary securities**.

Other rights

- 6.13 A holder of a **preference security** must have rights to receive notices, reports and audited **financial statements** and admission to meetings of **security holders** equal to the rights of a holder of **ordinary security**.

Options

Rights and obligations exclusive to options

- 6.14 The terms of issue of an option must provide:
- (a) that the rights attaching to the option will be amended to comply with these **Rules** applying to a reorganisation of capital (in the case of a **managed investment scheme**, interests) at the time of the reorganisation, to the extent necessary to ensure that the terms comply with these Rules; and
 - (b) that an option cannot be exercisable over a percentage of the **listee's** capital.

Rights to participate in issues of underlying securities

- 6.15 The terms of issue of an option must contain:
- (a) a statement of the rights attached to the option to participate in new issues without exercising the option; or
 - (b) a statement that the option does not have rights to participate in new issues without exercising the option,

however, nothing in this **Rule 6.15** prevents an option holder from exercising an option and participating in a new issue of **underlying securities** if the option is exercisable at the time of the new issue.

- 6.16 The terms of issue of an option must not provide a right to participate in a new issue without exercising the option, except where the option was issued:
- (a) under a **pro rata issue** to the holders of **ordinary securities**; or
 - (b) with the approval of holders of **ordinary securities**, and the option is not in a **class** of quoted options.

In each case, the option holder may participate in a new issue to the holders of the **underlying securities**.

For the purpose of paragraph (b), a report from an independent expert on the effect of the proposed right of participation, and a **voting restriction statement** must be included in the notice of meeting containing the resolution for approval.

Changes exercise prices or the number of underlying securities

6.17 The terms of issue of an option must contain a statement:

- (a) of whether or not the option holder has a right to a change in the exercise price of the option, or a change to the number of **underlying securities** to be issued upon exercise of the option and, if applicable, details of those rights – in which case, the rights must be consistent with **Rule 6.18**; or
- (b) that there are no rights to change.

Subject to **Rule 6.18**, the terms of issue of an option must not provide a right to change the exercise price of the option, or to change the number of **underlying securities** to be issued upon exercise, if the option terms provide a right to participate in a new issue without exercising the option.

6.18 An option may confer the right to a change in its exercise price, or a change to the number of **underlying securities** to be issued upon exercise, where:

- (a) If there is a **pro rata issue** to the holders of the **underlying securities**, the exercise price of an option may be reduced according to the following:

$$EP(new) = EP(old) - \frac{U[AVP - (SP + D)]}{N + 1}$$

EP(new) = the reduced exercise price of the option.

EP (old) = the initial exercise price of the option.

U = for each option, the number of **underlying securities** into which it is exercisable.

Note: E is one, other than where the number has changed due to a **bonus issue**.

AVP = the average **market price** per **security** of the **underlying securities** during the 5 **business days** ending on the day before the last day on which a security holder can be registered as a holder and have a right to participate in the **pro rata issue**.

SP = the subscription price for a **security** under the **pro rata issue**.

D = the amount of any dividend (in the case of a **managed investment scheme**, distribution) due but not yet paid on the existing **underlying securities**, other than dividends (or distributions) to be paid on the **underlying securities**.

N = the number of **securities** that must be held to receive a right to one new **security**.

This **Rule 6.18(a)** does not apply to a **bonus issue**.

Example: The **issuer's** equity capital consists of ordinary shares and options over unissued ordinary shares with an exercise price of \$1.90 each. The company announces a 2:5 **pro rata issue**. The Company has announced that no dividend is payable. The issue price for the shares under the **pro rata**

issue is \$3.50. The average price that ordinary shares trade at over the 5 **business days** ending on the day before the last day on which a security hold can be registered as a holder and have a right to participate is \$3.70. A **security holder** must hold 2.5 ordinary shares in order to receive one right ($5 / 2 = 2.5$, which *is N*). The exercise price of each option is reduced to 1.8428 cents.

- (b) If the option:
- (i) was issued with the approval of holders of **ordinary securities**; and
 - (ii) is not in a **class** of quoted options,

the terms of issue of the option may provide a formula for the exercise price or number of **underlying securities** to change if there is a **pro rata issue** to the holders of the **underlying securities**. A report by an independent expert on the effect of the proposed change, and a **voting restriction statement** must be included in the notice of meeting containing the resolution for approval.

This **Rule 6.18(b)** does not apply to a **bonus issue**.

- (c) If there is a **bonus issue** to the holders of the **underlying securities** (other than a **pro rata issue** of options on the same terms existing issued options), the number of **securities** to be issued upon exercise may be increased by the number of **securities** which the holder of the option would have received if the option had been exercised before the **record date** for the **bonus issue**.

Example: A **listee** has ordinary shares and options over unissued ordinary with an exercise price of \$1.00 each on issue. The **listee** makes a one for one **bonus issue**. An option holder with 2,000 options with an aggregate exercise price of \$2,000 will have an entitlement to 4,000 **securities** for a total exercise price of \$2,000. Each option has an exercise price of \$1.00 (and does not change) and entitles the holder (following the bonus issue) to 2 shares. Where the **listee** undertakes a further one for one **bonus issue**, the option holder would become entitled to 8,000 **securities** for a total exercise price of \$2,000. Each option is exercisable for \$1.00 and entitles the holder to 4 shares.

Other changes to terms of options

6.19 A change in respect of an option which:

- (a) has the effect of cancelling an option for no consideration can be made.
- (b) has the effect of cancelling an option for consideration (including through the issue of a new option on revised terms) requires the approval of holders of **ordinary securities** before the change is made. The notice of meeting must include a **voting restriction statement**.
- (c) has the effect of reducing the exercise price, increasing the period for exercise or increasing the number of **securities** received on exercise requires the approval of holders of **ordinary securities** before the change is made. The notice of meeting must include a **voting restriction statement**.

6.20 **APX** may aggregate separate transactions in respect of options if it considers appropriate, in determining whether:

- (a) a change that has the effect of cancelling an option for consideration has occurred or will occur; and
- (b) a change that has the effect of reducing the exercise price, increasing the period for exercise or increasing the number of **securities** received on exercise has occurred or will occur.

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- 6.21 **Rule 6.19** does not apply (and the approval of holders of **ordinary securities** is not required) to a change which is made to comply with these **Rules** where **APX** confirms, after considering full details of the proposed change, that **Rule 6.19** does not apply to the change.