

---

## 8. RESTRICTIONS ON NEW ISSUES OF SECURITIES

---

*Chapter 8 sets out details of restrictions on the issue by a listee of new securities, exceptions to the general rule and the process for approval/ratification by the listee.*

### New issues

#### Issues exceeding 15% of capital

- 8.1 Subject to Rule 8.5, a listee must not issue or agree to issue more **equity securities** than the number calculated according to the following:

***(15% x Base Amount) – Relevant Issues***

where

***Base Amount =***

The number of fully paid **ordinary securities** on issue 12 months before the date of issue or agreement (**12 months Base Amount**) plus:

- (i) the number of fully paid **ordinary securities** issued in the 12 months under an exception in **Rule 8.5**;
- (ii) the number of partly paid **ordinary securities** that became fully paid in the 12 months,

but subtracting the number of fully paid **ordinary securities** cancelled in the 12 months.

***Relevant Issues =***

The number of **equity securities** issued or agreed to be issued in the 12 months before the date of issue or agreement to issue *other than* under an exception in **Rule 8.5**.

- 8.2 In calculating the **12 months Base Amount**, if the listee's securities were first **quoted** 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 the listee's securities were first **quoted**.
- 8.3 In calculating the number of **equity securities** that an entity may issue or agree to issue under **Rule 8.1**, and the amount for **Relevant Issues**, the following rules apply:
- (a) each fully paid **ordinary security** is counted as one.
  - (b) each **partly paid security** is counted as the maximum number of fully paid **ordinary securities** into which it can be paid up.
  - (c) if the **security** is **convertible** into **ordinary securities**:
    - (i) if the conversion ration is fixed, each **security** will be counted as the maximum number of **ordinary securities** into which it can be converted;  
or

- 
- (ii) if it converts on the basis of the market value of **ordinary securities** at the time of conversion, each security will be counted as the maximum number of **ordinary securities** into which it can be converted at the **market price of ordinary securities** at the time of issuing the **convertible security**,

unless **APX** determines otherwise.

- (d) in any other case, each **security** is counted in the manner **APX** decides having regard to the need to ensure that holders of ordinary **securities** have an opportunity to vote on issues that may dilute their holders and the characteristics of the **security**.

8.4 For the purpose of **Rule 8.1**:

- (a) 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.
- (b) the sale or reissue of forfeited **equity securities** is treated as an issue of **equity securities**.

#### **Exceptions to Rule 8.1**

8.5 **Rule 8.1** does not apply to:

- (a) An issue approved by holders of **ordinary securities**.
- (b) A **pro rata issue** to holders of **ordinary securities** (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**) (after applying **Rule 8.13(a)(ii)**).
- (c) An issue to an underwriter of a **pro rata issue** to holders of **ordinary securities** if the underwriter has agreed to underwrite the **pro rata issue** and the **securities** are issued within 15 **business days** after the close of the offer.
- (d) An issue of shares equal to the shortfall under a **pro rata issue** to holders of **ordinary securities**, provided:
  - (i) the issue is within 3 months after the close of the offer;
  - (ii) at the time of the offer the **listee** stated that it reserved a discretion to issue shares equal to the shortfall under the **pro rata issue**; and
  - (iii) the issue price is at least equal to the price at which the **securities** were offered under the **pro rata issue**.
- (e) An issue on the conversion of **convertible securities**, where the issue of the **convertible securities** complied with these **Rules** at the time of issue.
- (f) An issue pursuant to a **takeover** that is required to comply with the **Act** or pursuant to a **scheme of arrangement** that is required to comply with the **Act**.
- (g) An issue, where the terms of the issue are disclosed in the **takeover** or **scheme of arrangement** documents, and the purpose of the issue is to raise funds for the consideration payable under:
  - (i) an unconditional off-market bid that is required to comply with the **Act**;

- 
- (ii) a publicly announced market bid that is required to comply with the **Act**; or
    - (iii) a **scheme of arrangement** approved by the court under the **Act**.
  - (h) An issue under a **dividend or distribution plan** where the plan has no limits on a **security holder's** ability to participate in the plan.
  - (i) An issue under an **employee incentive scheme** that was:
    - (i) established within 3 years before the date of the issue and the scheme was established before the **listee** was admitted to the **official list** and the **security offer document** or **information memorandum** included a summary of the terms of the **employee incentive scheme**; or
    - (ii) approved by holders of **ordinary securities** within 3 years before the date of the issue and the notice of meeting in relation to the approval of holders of the **ordinary securities** included the following:
      - (A) a copy or summary of the terms of the **employee incentive scheme**;
      - (B) the number of **securities** issued under the **employee incentive scheme** since the later of the time it was last approved by holders of **ordinary securities** and the date the **employee incentive scheme** was established; and
      - (C) a **voting restriction statement**.
  - (j) An issue of **preference securities** with no rights of conversion into another **class of equity security**.
  - (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 to a person as underwriter of options who has agreed to subscribe for **securities** equal to the number of **securities** that could be issued if all options the subject of the underwriting agreement were exercised, provided:
    - (i) the issue of options complied with these **Rules** at the time of issue;
    - (ii) the **underlying securities** are issued to the underwriter within 10 **business days** after expiry of the options; and
    - (iii) disclosure of the underwriting agreement has occurred under **Rule 12.16**.
  - (m) An issue under an agreement to issue **securities** where the **listee** complied with these **Rules** at the time it entered into the agreement.
  - (n) An issue approved by holders of **ordinary securities** under **Rule 17.4** where the notice of meeting stated that approval under **Rule 17.4** constitutes approval under this **Rule 8.5(n)**.
  - (o) An issue of **securities** (other than to an underwriter of 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 8.5(o)** is relied on only once in any 12 month period;

- 
- (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**.

- (p) An issue of **securities** approved for the purposes of Item 7 of section 611 of the **Act**.

#### **Approval under Rules 8.4(a) and 8.5(a)**

8.6 The notice of meeting to approve an issue or an agreement to issue, must include:

- (a) 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;
- (b) a statement that the **securities** will be issued by the listee;
  - (i) on a date no later than 3 months after the date of the meeting; or
  - (ii) if court approval of a reorganisation of capital (in the case of a **managed investment scheme**, interests) is required before the issue, a date no later than 3 months after the date of court approval;
- (c) the issue price of the **securities**, which must be either:
  - (i) a fixed price; or
  - (ii) a minimum price which is either a fixed price or a stated percentage that is no 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 day on which the issue was made or, if there is a **security offer document** relating to the issue, over the last 5 **business days** on which sales in the **securities** were recorded before the date the **security offer document** is lodged with **ASIC**;
- (d) each subscriber's name (if known) or the basis upon which subscribers will be identified or selected;
- (e) a description of the terms of the **securities**;
- (f) the proposed use of the subscription funds;
- (g) the dates of allotment or a statement that allotment will occur during a specified period;

- 
- (h) a **voting restriction statement**, except where **security holders** are to receive a priority entitlement as part of a public offer where:
    - (i) existing **security holders** will have a priority entitlement to at least 10% of the **securities** to be offered pursuant to the public offer; and
    - (ii) the number of **securities** issued to a holder of **ordinary securities** is limited to the higher of 5% of all the **securities** being offered under the priority entitlement and the number the holder would be entitled to under a **pro rata issue** of all those **securities**; and
  - (i) in the case of an agreement for the issue of **securities** which is part of a public offer, a **voting restriction statement** in relation to a party to the agreement, and an adequate summary of the agreement.

#### **Ratification of an issue of securities**

- 8.7 An issue of **securities** made without approval under **Rule 8.5(a)** is deemed as having been made with approval for the purpose of **Rule 8.5(a)** if:
  - (a) the issue did not exceed the limit in **Rule 8.1**; and
  - (b) holders of **ordinary securities** subsequently approve it.
- 8.8 The notice of meeting for approval under **Rule 8.7** must include:
  - (a) the number of **securities** issued;
  - (b) the price at which the **securities** were issued;
  - (c) a description of the terms of the **securities**;
  - (d) each subscriber's name or the basis on which subscribers were determined;
  - (e) the use (or proposed use) of the subscription funds; and
  - (f) a **voting restriction statement**.

#### **No issue without approval before a meeting to appoint directors, responsible entity or management company**

- 8.9 The approval of holders of **ordinary securities** is required before a **listee**:
  - (a) issues; or
  - (b) agrees to issue (other than an agreement conditional upon approval of holders of **ordinary securities**),  
  
any **equity securities** where the holders or beneficial owners of more than 50% of the **ordinary securities** notify the **listee** in writing that the holders or beneficial owners intend to call a general meeting to appoint or remove directors (if the **listee** is a **managed investment scheme**, to appoint or remove a **responsible entity** or **management company**).
- 8.10 For the purpose of **Rule 8.9**:
  - (a) the restriction in **Rule 8.9** applies for 2 months after the date of the notice, but does not prevent an issue under a written contract entered into before the **listee** received the notice; and

- 
- (b) if a person giving the notice is not a member, the notice must be accompanied by a statutory declaration from the holder verifying the person's beneficial ownership of the **ordinary securities**.

#### Issues under a dividend or distribution plan

8.11 A **listee** may only make an issue under a **dividend or distribution plan** if the following conditions are met:

- (a) the **securities** rank equally with a **class of listed securities** (disregarding any rights relating to the next dividend (in the case of a **managed investment scheme**, the next distribution) and any right to participate in a concurrent offer); and
- (b) participants may elect under the plan whether to participate for some or all of their holdings.

The plan may limit participation on:

- (c) subject to **Rule 8.11(d)**, the number of **securities** in respect of a dividend or distribution is to be paid that may participate in the plan, or the amount of the dividend or distribution that may be reinvested in the plan, provided the limit is the same for all **security holders** (except a trustee or a nominee); and
- (d) if the **securities** are held by a trustee or nominee, the limits in the plan must operate in respect of the trustee or nominee to allow them to participate for each person whose **securities** are held by the trustee or nominee.

Cross-reference: **Rule 8.5(h)**

#### Notification of takeover offer

8.12 The approval of holders of **ordinary securities** is required before a **listee**:

- (a) issues; or
- (b) agrees to issue,

**equity securities**, within the period of 3 months after the **listee** receives notice in writing that a person is making, or proposes to make, a **takeover** in respect of **securities** of the **listee**, except an issue or agreement to issue where:

- (c) the **securities** are issued pursuant to an issue notified to **APX** before the **listee** received notice, or under an agreement to issue notified to **APX** before the **listee** received notice;
- (d) the **securities** are issued under a **pro rata issue** to holders of **ordinary securities**;
- (e) the **securities** are issued upon the exercise of rights of **conversion**;
- (f) the **securities** are issued under a **takeover** that is required to comply with the **Act**;
- (g) the **securities** are issued under a **dividend or distribution plan** that is in operation at the time the notice is received; or
- (h) an agreement to issue **equity securities** that is conditional on holders of **ordinary securities** approving the issue before the issue is made, provided that the **equity securities** must not be issued without approval.

---

## Pro rata issues

8.13 A **listee** conducting a **pro rata issue** must comply with the following:

- (a) the offer of the securities must be to all security holders:
  - (i) with a registered address in Australia; and
  - (ii) with a registered address *outside* Australia (except where **Rule 8.14** applies);
- (b) the basis for determining the entitlement must not alter during the period of the offer;
- (c) the issue price of each **security**:
  - (i) subject to **Rule 8.13(c)(ii)**, must not contain a fraction of a cent; or
  - (ii) may contain a fraction of a cent, if the minimum bid that may be made under the **Business Rules** in relation to **securities** of the same **class** contains the same fraction;
- (d) the ratio of **securities** offered:
  - (i) subject to **Rule 8.13(d)(ii)**, cannot exceed one **security** for each **security** held (excluding free attaching options);
  - (ii) can exceed one **security** for each **security** held if the offer is a **bonus issue** or the following conditions are met:
    - (A) the offer is renounceable; and
    - (B) the issue price is not more than 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 day on which the issue was announced;
- (e) the **security offer document** or offer may allow offerees to subscribe for a greater number of **securities** than their entitlement only if:
  - (i) subscriptions in excess of entitlements are made out of the shortfall; and
  - (ii) for a renounceable offer, the **listee** complies with **Rule 8.17**;
- (f) the offer must not include alternatives, except to allow full or part payment on acceptance; and
- (g) if it is an offer of ordinary securities and options, the **listee** must issue separate certificates in respect of the ordinary securities and options (if certificated).

Cross reference: **Listing Rule Procedure 12.28.8 and 12.28.9**

8.14 **Rule 8.13(a)(ii)** does not apply in relation to a particular jurisdiction if each of the following are satisfied:

- (a) the **listee** determines that it is unreasonable to make the offer after considering:
  - (i) the number of **security holders** in the jurisdiction where the offer would be made;

- 
- (ii) the number and value of **securities** the **security holders** would be offered; and
  - (iii) the cost of complying with the legal and regulatory requirements in that jurisdiction;
- (b) the **listee** must send to each **security holder** to whom it will not offer the **securities** (*ineligible foreign security holder*) details of the issue and advice that the **listee** will not offer **securities** to the **security 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 **ineligible foreign security holders** and to account to them for the net proceeds of the sale; and
  - (ii) advises each **ineligible foreign security holder** not given the entitlements that a nominee in Australia will arrange for sale of the entitlements and, if they are sold, for the proceeds (less expenses and tax) to be sent to the **security holder**.

### **Rights issues**

- 8.15 **APX** may grant **quotation** of the rights in a rights issue and if it does so, on the exercise of the rights and issue of the **underlying securities**, those **underlying securities** will be admitted to **quotation**.
- 8.16 A **listee** must not permit a director of a **listee** (or in the case of a **managed investment scheme**, the **responsible entity** or **management company**) to subscribe for or purchase excess **securities** without those **securities** being offered to other existing holders on the same terms.

### **Entitlement issues**

- 8.17 In the case of an offer that is not pro rata, or an offer to which **Rule 8.13(e)** or **8.19(c)** applies, the **listee** must:
- (a) accept evidence of entitlement constituted by a contract note endorsed by a **market participant** to show that the **securities** have been acquired by a person on a 'cum' basis; and
  - (b) make application forms available to those acquirers to complete and return.

### **Issues of options**

- 8.18 A **listee** cannot have more options on issue than **underlying securities**, except where it makes an offer of one **ordinary security** and one option for each **ordinary security**.

### **Issues in a different entity**

- 8.19 An entitlement to **securities** in another entity may only be offered by a **listee** to holders of its **ordinary securities** if:
- (a) the offers are pro rata, or made in another way that, in **APX's** opinion, is acceptable in all the circumstances;

- 
- (b) there must be no limitation on the number of **securities** which a **security holder** must hold before the entitlement accrues, however this **Rule 8.19(b)** does not apply if the resulting holding would be less than a holding with a value of \$500 and no facility to acquire additional securities is offered;
  - (c) if subscriptions in excess of entitlements are allowed, the **listee** must comply with **Rule 8.17**; and
  - (d) the **record date** to decide entitlements must be at least 7 **business days** after the **security offer document** or **information memorandum** is given to **APX**.