
9. BUY BACKS AND FORFEITURE

Chapter 9 sets out rules for on and off market buybacks by a listee and the requirements with respect to forfeited securities.

Purchase from a related party

- 9.1 Where a **listee acquires** its own **securities** from a **related party**, whether directly or through intermediaries, the requirements of Chapter 2E of the **Act** must be complied with.

On-market buy-backs

Pre-condition

- 9.2 A **listee** may only buy **securities** under an on-market buy-back if transactions in the **listee's securities** were recorded on the **APX market** on at least 5 **business days** in the 3 months before it buys back the **securities**.

Purchase price

- 9.3 A **listee** may only buy-back **securities** under an on-market buy-back at a price which is not more than 5% above the average of the **market price** for **securities** in that **class**. The average is calculated over the last 5 **business days** on which sales in the **securities** were recorded before the day on which the purchase under the buy-back was made.

Buy-backs not under the Act

- 9.4 A **listee** not subject to the buy-back provisions of the **Act** may buy-back its **securities** on-market only if it consults **APX** before the buy-back and complies with any requirements **APX** sets. **APX** may require the **listee** to comply with the **Act** as if it were a company, or with these **Rules** relating to on-market buy-backs by **listees**, with any adaptations that, **APX** considers appropriate.

APX requirements for buy-backs

- 9.5 A **listee** must complete the following documents where specified in respect of a buy-back (other than a minimum holding buy-back or as specified below) and submit to **APX** at the times specified:
- (a) **Appendix 9-1** – Announcement of buy-back: immediately the **listee** decides to proceed with the buy-back;
 - (b) **Appendix 9-2** – Change relating to buy-back: immediately any change is made to the information the **listee** has given to **APX** in an **Appendix 9-1** or **Appendix 9-2**;
 - (c) **Appendix 9-3** – Daily notification: at least half an hour before the commencement of trading on the next **business day** after any day on which **securities** are bought-back (this does not apply to a selective buy-back);
 - (d) **Appendix 9-4** – Final notice: at least half an hour before the commencement of trading on the next **business day** after any of the following.

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- (i) the **listee** buys-back the maximum number of **securities** that it wanted;
 - (ii) the **listee** decides it will stop buying-back **securities**; or
 - (iii) if the buy-back is under an equal access buy-back scheme, the last day of the offer period;
- (e) **ASIC Form 484** – at the same time as the notice to **ASIC** of any cancellation of securities is lodged with **ASIC** following the buy-back.

Forfeited securities

Forfeited securities

9.6 If forfeited **securities** are auctioned, the following must be terms of the auction:

- (a) settlement must be effected on the day of the auction or, if the purchaser chooses, the next day on which **banks** are open for business; and
- (b) the **securities** must not be offered in parcels larger than 10% of the total number to be offered.

Cross-reference: **Rule 5.24**.

Forfeited shares in listee that is a no liability company

9.7 If shares in a **listee** that is a no liability company are forfeited, the **listee** must notify the **APX Announcements Office** of the forfeiture without delay. It must also provide **APX** with the following information in the time and manner specified:

- (a) the time and date of any auction of the forfeited shares – at least 10 **business days** before the date of the auction;
- (b) until the auction, the number of forfeited shares redeemed by former holders of the forfeited shares each week – by 12 noon each Monday until the date of the auction at on which the **listee** proposes to sell the remaining forfeited shares;
- (c) after the auction of the forfeited shares:
 - (i) the number of forfeited shares offered for sale, the number sold, the average sale price (or range of prices), the total proceeds of the auction and the remaining number of forfeited shares – by 12 noon on the day after the auction;
 - (ii) any net amount payable to former holders of the shares forfeited for non-payment of calls, and the amount payable per share – within 5 **business days** after the auction;
- (d) if any forfeited shares are offered to **security holders**, the number of shares re-issued, the total proceeds raised and the remaining number of forfeited shares – without delay after the close of the offer to **security holders**;
- (e) if any forfeited shares are to be sold otherwise than by auction:
 - (i) the number of forfeited shares to be sold and the manner in which they are to be sold – on the day before the sale;

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- (ii) the number of shares sold, the average price (or range of prices), the total proceeds of sale and the remaining number of forfeited shares, – at least once each week; and
 - (f) if any of the forfeited shares are to be cancelled, the number of shares cancelled – by 12 noon on the business day after the date of the general meeting held to approve the cancellation.

Cancelling forfeited shares by a listee that is a limited liability company

9.8 A **listee** that is a limited liability company may only cancel forfeited shares if it satisfied **APX** that each of the following conditions is met:

- (a) the cancellation is approved by holders of **ordinary securities**. The notice of meeting must include each of the following:
 - (i) details of the forfeited shares, including their total issue price, the amount called but unpaid, and the amount uncalled;
 - (ii) the outstanding liability of the former holder, and what action the listee has taken (and will take) to recover that amount; and
 - (iii) a **voting restriction statement**;
- (b) under the **listee's constitution** the former holder must remain liable (in the absence of the approval of holders of ordinary shares) for any amount called but unpaid on the shares despite the fact that they have been forfeited; and
- (c) liability for the amount called but unpaid in respect of forfeited shares which have been cancelled is not released or waived without the approval of holders of ordinary shares. This approval may be given at the meeting that approves the cancellation, or at another meeting. If the approval is given at another meeting, the notice of meeting must include each of the following:
 - (i) details of the forfeited shares, including their total issue price, the amount called but unpaid and the amount that is uncalled;
 - (ii) the outstanding liability of the former holder, what action the company has taken to recover those amounts (and what action it will take if the meeting does not release the liability); and
 - (iii) a **voting restriction statement**.