

Chapter 9

Restricted securities

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Explanatory note

*Restricted securities may not be dealt with for a specified period (the escrow period) and, if they are in the same *class as quoted *securities, are required to be kept on the entity's *issuer sponsored subregister and to have a *holding lock applied for the duration of that period – refer listing rules 9.1(a) and 15.12.2.

Restricted securities may not participate in a return of capital – refer listing rules 7.24A and 15.12.4.

ASX has issued Guidance Note 11 *Restricted Securities and Voluntary Escrow* with guidance on these escrow requirements.

Requirements for all restricted securities

Application of restrictions

- 9.1 Subject to rules 9.2, 9.5 and 9.6, an entity which issues *restricted securities, or has them on issue, must:
- (a) include in its constitution the provisions set out in rule 15.12;
 - (b) unless ASX agrees that this requirement should not apply in a particular case, enter into a *restriction deed with the holder of the *restricted securities and each *controller in the form set out in Appendix 9A or in such other form as ASX requires or permits applying the restrictions in Appendix 9B or such other restrictions as ASX, in its discretion, decides;
 - (c) if ASX agrees that the requirement in rule 9.1(b) should not apply in a particular case, instead give a *restriction notice in writing to the holder of the *restricted securities in the form set out in Appendix 9C or in such other form as ASX requires or permits applying the restrictions in Appendix 9B or such other restrictions as ASX, in its discretion, decides;
 - (d) unless ASX otherwise agrees in writing, for the duration of the applicable restrictions:
 - (i) not amend or remove any provisions included in its constitution under rule 9.1(a);
 - (ii) not vary or terminate any *restriction deed entered into under rule 9.1(b); and
 - (iii) not vary or terminate any *restriction notice given under rule 9.1(c);
 - (e) subject to rule 9.1(i) below, if the *restricted securities are in the same *class as *quoted securities, unless ASX otherwise agrees in writing, for the duration of the applicable restrictions:
 - (i) enter and keep the *restricted securities on its *issuer sponsored subregister;

- (ii) identify in its *issuer sponsored subregister that the *securities are *restricted securities;
 - (iii) apply a *holding lock to the *restricted securities; and
 - (iv) not register a transfer of, or acknowledge any other *disposal of, the *restricted securities;
- (f) if the entity uses a third party to maintain its *issuer sponsored subregister, provide to ASX a written undertaking from that third party to comply with rule 9.1(e);
- (g) subject to rule 9.1(i) below, if the *restricted securities are not in the same *class as quoted *securities, unless ASX otherwise agrees in writing, for the duration of the applicable restrictions:
 - (i) enter and keep the *restricted securities on its *certificated subregister;
 - (ii) identify in its *certificated subregister that the *securities are *restricted securities;
 - (iii) state on the certificate for the *securities that they are *restricted securities under the ASX Listing Rules and are not able to be transferred or otherwise disposed of by the holder except in accordance with those rules;
 - (iv) provide to ASX an undertaking in writing from a bank or *recognised trustee to hold the certificate for the *securities in escrow and not to deliver it up to any party until the expiry of those restrictions; and
 - (v) not register a transfer of, or acknowledge any other *disposal of, the *restricted securities;
- (h) if the entity uses a third party to maintain its *certificated subregister, provide to ASX a written undertaking from that third party to comply with rule 9.1(g); and
- (i) if the *restricted securities have CDIs issued over them:
 - (i) if and to the extent that the holder holds CDIs for the *restricted securities, comply with rule 9.1(e) in relation to the CDIs; and
 - (ii) if and to the extent that the holder holds the *underlying securities, comply with rule 9.1(g) in relation to the underlying securities.

Introduced 01/07/96 Amended 01/07/98, 01/12/19

Note: The definition of restricted securities includes securities ASX decides are restricted securities (see the definition of the term in rule 19.12).

9.2 Unless ASX decides otherwise, the requirements in rule 9.1 do not apply in the circumstances described in clauses 1, 2, 3, 4, 6 and 7 of Appendix 9B in relation to any of the following entities:

- (a) an entity that is admitted under the profit test in rule 1.2;
- (b) an entity that has a track record of profitability or revenue acceptable to ASX;
or
- (c) an entity that, in the opinion of ASX, has a substantial proportion of its assets as tangible assets or assets with a readily ascertainable value.

Introduced 01/07/98 Amended 01/12/19

When restrictions must be applied

9.3 An entity which issues *restricted securities, or has them on issue, and which is:

- (a) applying for admission to the official list, must comply with rule 9.1 before it is admitted to the official list;
- (b) required under rule 10.7 to issue *restricted securities to a vendor of a *classified asset, must comply with rule 9.1 before the vendor gets the *restricted securities or any rights in relation to them; or

- (c) required under rule 11.1.3 to re-comply with chapters 1 and 2, must comply with rule 9.1 before its *securities will be re-instated to *quotation.

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Note: Rule 9.3(b) does not prevent the entity agreeing with the vendor to issue restricted securities on condition that rule 9.1 is complied with before the securities are issued.

Enforcement of restrictions

- 9.4 Subject to rules 9.5 and 9.6, an entity must comply with, and enforce, a *restriction deed, and enforce its constitution, to ensure compliance with the requirements for *restricted securities.

Introduced 01/07/96 Amended 01/12/19

Note: The requirements for restricted securities are in this chapter, rule 15.12, and Appendices 9A, 9B and 9C.

Treatment of restricted securities in a takeover bid or merger

- 9.5 An entity may allow the removal of a *holding lock to enable the holder of *restricted securities to accept an offer under a takeover bid if and only if all of the following conditions are met:

- (a) 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;
- (b) holders of at least half of the *securities in the bid class that are not *restricted securities to which the offers relate have accepted;
- (c) if the offer is conditional, the bidder and the holder agree in writing that the *holding lock will be re-applied to each *restricted security that is not bought by the bidder under the offer; and
- (d) where applicable, the *holding lock is re-applied in accordance with the agreement referred to in (c) above.

An entity may also allow the removal of a *holding lock to enable the holder of *restricted securities to be transferred or cancelled as part of a merger by way of scheme of arrangement under Part 5.1 of the Corporations Act if and only if the entity and the holder agree in writing that the *holding lock will be re-applied if the merger does not take effect and, where applicable, the *holding lock is re-applied in accordance with that agreement.

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Note: "Takeover bid" has the same meaning as in section 9 of the Corporations Act. The reference to a "merger" by way of scheme of arrangement under Part 5.1 of the Corporations Act covers any form of business combination effected via such a scheme.

Transfers with no change in beneficial ownership

- 9.6 An entity may allow the removal of a *holding lock to enable the holder of *restricted securities to transfer some or all of those of *securities to a related party of the holder, if and only if all of the following conditions are met:

- (a) the transfer does not involve any change in the beneficial ownership of the *restricted securities;
- (b) if the entity has entered into a *restriction deed with the holder under rule 9.1(b), the entity, the transferee and each *controller of the transferee enter into an equivalent *restriction deed in the form set out in Appendix 9A or in such other form as ASX requires or permits immediately following the transfer restricting the *disposal of the *securities for the duration of the escrow period applicable to the *restricted securities; and
- (c) if the entity has given a notice to the holder under rule 9.1(c), the entity gives an equivalent notice to the transferee in the form set out in Appendix 9C or in such other form as ASX requires or permits immediately following the transfer restricting the

+disposal of the +securities for the duration of the escrow period applicable to the
+restricted securities.

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