

8. VOTING RIGHTS AND RIGHTS OF EQUITY SECURITIES

8.1 VOTING

8.1.1 **Differential Voting:** Securities of an NZAX Issuer may carry different numbers of Votes including “no votes.”

Securities which carry different numbers of Votes per Security, will constitute different Classes, notwithstanding that their other rights and privileges may be identical.

8.1.2 **Variation in Voting Rights:** The Constitution of an NZAX Issuer may contain a provision allowing Votes attaching to a Class of Securities to vary from time to time by reference to the economic value of a part or division of the NZAX Issuer's operations (which economic value may be ascertained by reference to the market price of Securities linked to that part or division).

8.1.3 **Partly Paid Securities:** Each Security which is not fully paid shall carry only a fraction of the Vote which would be exercisable if the Security were fully paid. The fraction must be equivalent to the proportion which the amount paid (not credited) is of the total amounts paid and payable (excluding amounts credited and amounts paid in advance of a call).

1. **Bonus shares credited as fully paid carry a full Vote because zero cents per share is paid and the total paid and payable is zero cents.**
2. **Example:** A company issues shares at an issue price of 20 cents each, paid to 1 cent and with further 18 cents credited, leaving 1 cent to pay. The voting entitlement of the share is one-half of a Vote because the 18 cents that is credited is ignored when calculating amounts paid and payable for this purpose. If the amount actually paid is 19 cents, the voting entitlement is 95% of a Vote. If 10 cents was paid and 10 cents to pay, the voting entitlement would be one-half even if the 10 cents to be paid was paid in advance of the call.

8.1.4 Participation of Options in Rights issues: An Option must not confer the right to participate in a Rights issue unless the Option:

- (a) is exercised before the Record Date for the Rights issue; or
- (b) was issued under a pro rata offer made pursuant to NZAX Listing Rule 7.3.4, to the holders of Quoted Equity Securities; or
- (c) was issued with the approval of holders of Quoted Equity Securities, and the Option holder can participate in a new issue to the holders of the underlying Securities in accordance with the terms of such an Option:

Provided that nothing in this NZAX Listing Rule 8.1.4 shall apply to any Option which was issued prior to the coming into force of this NZAX Listing Rule or Listing of an NZAX Issuer.

8.1.5 Change of Option's Exercise Price or Number of Underlying Securities: An Option must not confer the right to a change in the exercise price or number of underlying Securities, except if that Option:

- (a) was issued with the approval of holders of Quoted Equity Securities, then the exercise price or number of underlying Securities may change in accordance with the formula or provision contained in the terms of the Option if there is a Rights issue to the holders of the underlying Securities; or
- (b) was not issued with the approval of holders of Quoted Securities and there is a Rights issue to the holders of the underlying Securities, then the exercise price of that Option may be reduced according to the formula set out as follows:

$$O^1 = O - \frac{E[P-(S+D)]}{N + 1}$$

O^1 = the new exercise price of the Option.

O = the old exercise price of the Option.

E = the number of underlying Securities into which one Option is exercisable.

[Note: E is generally one unless the number has changed because of a bonus issue or capital change.]

P = the average market price per share (weighted by reference to volume) of underlying Securities during the five Business Days ending on the day before the Rights date.

S = the subscription price for a Security under the Rights issue. D = the dividend (in the case of a trust, distribution) due but not yet paid on the existing underlying Securities (except those to be issued under the Rights issue).

N = the number of Securities with Rights or entitlements that must be held to receive a Right to one new Security:

Provided that nothing in this NZAX Listing Rule shall apply to any Option which was issued prior to the coming into force of this NZAX Listing Rule or Listing of an Issuer.

Example: The capital of a company comprises ordinary shares at an issue price of 20 cents each and Options over unissued ordinary shares exercisable at \$1.00 each. The company announces a 4:7 Rights issue. There is no dividend payable. The issue price for the shares under the Rights issue is \$2.00. The average price that ordinary shares trade at over the five Business days ending on the day before the ex Rights date or ex entitlement date is \$3.00 after the announcement. To receive one Right a shareholder must hold 1.75 ordinary shares ($7 \div 4 = 1.75$, which is N). The amount by which the exercise price of an Option is to be reduced is calculated as follows:

$$\begin{aligned}
 O^1 &= 0 - \frac{E[P-(S+D)]}{N + 1} \\
 &= 1 - \frac{1[3.00-(2.00+0)]}{1.75 + 1} \\
 &= 63.6364 \text{ cents}
 \end{aligned}$$

The new exercise price of the option is 63.6364 cents and the Option holder has gained the benefit of any bonus element in the rights issue. This benefit is the same as that conferred on shareholders. There is no change in the number of shares to which the Option holder is entitled. At the time when the Option is exercised, it may be necessary to round up or round down any fraction of a cent remaining after aggregating the exercise price of each of the Options exercised by the holder.

8.1.6 Change of Option on a Bonus Issue: If there is a bonus issue to the holders of the underlying Securities the number of Securities over which an Option is exercisable may be increased (or additional Securities may be reserved for issue on exercise of an Option) by the number of Securities which the holder of the Option would have received if that Option had been exercised before the Record Date for the issue.

Example: The capital of a company comprises ordinary shares of \$1.00 each and Options over unissued ordinary shares exercisable at \$1.00 each. The entity makes a 1:1 bonus issue. An Option holder with 1000 Options with a total exercise amount payable of \$1,000 will then have an entitlement to 2000 Securities for a total exercise amount payable of \$1,000. Each Option is exercisable for \$1.00 and entitles the holder to 2 shares. The exercise amount payable per Option stays the same (i.e. \$1.00). If the entity subsequently has a further 1:1 bonus issue, the Option holder would become entitled to 4000 Securities for a total exercise amount payable of \$1,000. Each Option is exercisable

for \$1.00 and entitles the holder to 4 shares. The exercise amount payable per Option stays the same (i.e., \$1.00).

- 8.1.7 **Change of Option on a consolidation or subdivision or similar proportionate reconstruction:** If there is a consolidation or subdivision or similar proportionate reconstruction of the underlying Securities, the number of Securities over which an Option is exercisable may be consolidated or subdivided in the same ratio and the exercisable price amended in inverse proportion to that ratio.

8.2 LIEN AND FORFEITURE

- 8.2.1 **When Enforceable:** Except in the case of a Non-Standard NZAX Issuer, an NZAX Issuer's lien on Equity Securities and on dividends or other distributions from time to time declared in respect of such Securities shall be restricted to one in respect of:

- (a) unpaid calls, installments, premiums or other amounts, and any interest payable on such amounts, relating to the specific Securities; and
- (b) such amounts as the NZAX Issuer may be called upon to pay under any legislation in respect of the specific Securities.

- 8.2.2 **Application of Proceeds of Sale:** If Equity Securities are forfeited and sold or are sold to enforce a lien, any residue after the satisfaction of unpaid calls, installments, premiums or other amounts and interest thereon, and expenses, shall be paid to the previous owner, or to the executors, administrators or assigns of the previous owner.

- 8.2.3 **Restrictions on Forfeiture:** Equity Securities shall not be liable to forfeiture for the failure of persons entitled thereto (by transmission or otherwise) to submit evidence of title within a specified time.

8.3 MODIFICATION OF RIGHTS OF SECURITY HOLDERS

- 8.3.1 **Procedure:** Every NZAX Issuer shall comply with the provisions of sections 116 and 117 of the Companies Act 1993, whether or not the NZAX Issuer is a company registered under that Act. For the purposes of

this NZAX Listing Rule, those sections shall be deemed to be modified so that:

- (a) references in those sections to "shares" shall (subject to NZAX Listing Rule A4.3.2) be deemed to include references to all Equity Securities of that NZAX Issuer, and references to "shareholders" shall be read accordingly;
- (b) in respect of NZAX Issuers which are not companies registered under the Companies Act 1993, references to the "company" shall be deemed to be references to the NZAX Issuer, and references to pre-emptive rights under section 45 of that Act shall be deemed to be deleted from those sections; and
- (c) in respect of Equity Securities which are not shares of a company registered under the Companies Act 1993:
 - (i) references to a special resolution shall be deemed to be references to a resolution approved by a majority of 75% of votes of the holders of those Securities entitled to vote and voting; and
 - (ii) references to the constitution shall be deemed to be references to the document which governs the rights of those Equity Securities.

8.3.2 **Exception:** An NZAX Issuer shall be required by NZAX Listing Rule 8.3.1 to comply with sections 116 and 117 of the Companies Act 1993 but shall not be required by the modifications deemed to be made thereto by NZAX Listing Rule 8.3.1 to comply with those sections in respect of actions that affect the rights attached to

- (a) Equity Securities which are not Quoted; or
- (b) Equity Securities which are not shares of a company if:
 - (i) those Equity Securities were issued before 30 April 1995; or
 - (ii) those Equity Securities were issued on terms which expressly permitted the action in question to be taken without the prior approval of holders of those Equity Securities, and those terms

were clearly disclosed in the Offering Document (if any) pursuant to which those Equity Securities were offered.

8.3.3 **Section 118:** NZAX Listing Rule 8.3.1 shall not have the effect of deeming section 118 of the Companies Act 1993 to apply to any Securities other than shares of a company registered under the Companies Act 1993.

8.4 CANCELLATION OF UNPAID AMOUNTS

No obligation to pay any amount which is unpaid on any Equity Security shall be cancelled, reduced or deferred without the authority of an Ordinary Resolution of the NZAX Issuer.

1. No vote in favour of any such resolution shall be cast by any person (or by any Associated Person of that person) who is intended to benefit from the reduction, deferral or cancellation, unless the reduction, deferral or cancellation benefits all holders of Equity Securities of the NZAX Issuer on the same basis.
2. Any agreement involving a transaction referred to in this NZAX Listing Rule must comply with NZAX Listing Rule 1.9.

8.5 SALE OF MINIMUM HOLDINGS

The Constitution of an NZAX Issuer may prescribe procedures entitling the NZAX Issuer, after giving not less than three months prior notice to holders of Securities of less than a Minimum Holding to sell such Securities (through NZX or in some other manner approved by NZX) and to account to the Holders for the proceeds of sale after deduction of reasonable sale expenses.