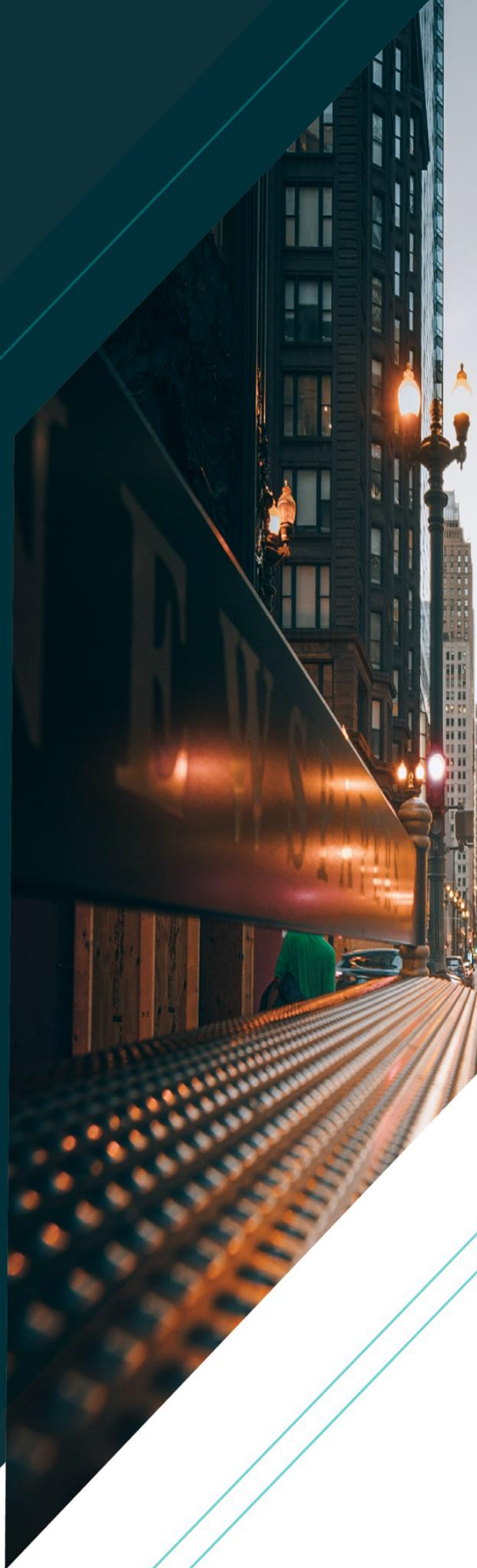


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Restricted Securities

Practice Note 12



**National
Stock Exchange**
of Australia



Introduction

PRACTICE NOTE 12

The purpose of this Practice Note

The National Stock Exchange of Australia Limited (NSX, the Exchange), like most stock exchanges, may impose restrictions on certain Persons trading their securities in an Issuer for a certain period of time as a condition of listing or re-quotations after a reconstruction event.

These restrictions are generally applied to early investors in an Issuer and to Persons who have provided assets or services to an Issuer in exchange for securities. By placing restrictions on the securities, the effective ownership or control of the shares cannot be transferred. This helps to protect the integrity of the market that the NSX conducts, as this delays the time at which a Person can potentially realise the value of their securities, potentially disadvantaging other investors. Further, this delay allows the value of assets or services sold to an Issuer to become more apparent, and for the market price of the Issuer's securities to adjust before the vendor receives full consideration.

This practice note is not a substitute for the Issuer seeking its own professional advice. There may be differences in each and every case that the Issuer needs to fully consider as to the ultimate requirements for listing procedures, adhering to the NSX Rules, conditions of listing and adhering to the Australian Corporations Act.

The main points

1. Regulatory Objectives
2. Listing Rules
3. What are Restricted Securities?
4. Method of Restriction
5. Voting and Dividend Rights
6. Release of Restriction Due to Takeover or Merger
7. Relief for Numerous Small Unrelated Parties
8. What Restrictions will Apply?
9. Cash Formula
10. Voluntary Restriction or Escrow
11. Further Information

Related materials

NSX Listing Rules

Guidance

The NSX issues practice notes to promote commercial certainty, reduce costs to business and assist market participants, and we are available to discuss any questions you have in relation to a practice note.

NSX may replace practice notes at any time. Issuers should contact NSX to ensure that they have the latest version of a practice note. As a practice note is only a guide to NSX practice, Issuers are advised to contact NSX to discuss their particular circumstances and the application of the listing rules. NSX cannot give legal advice to Issuers and recommends that they consider taking advice from a qualified professional person.



Section 1 – Regulatory Objectives

1. Most stock exchanges impose restrictions on certain Persons trading their securities in a listed Issuer for a certain period of time. These restrictions are generally applied to early investors in an Issuer and to Persons who have provided assets or services to an Issuer in exchange for securities. Placing these restrictions delays the time at which a person can potentially realise the value of their securities by selling them.
2. The purpose of such restrictions is to ensure earlier investors and people who have sold assets or services to a listed Issuer in exchange for securities cannot realise the value of their securities before the value of their contribution to the listed Issuer is clearer. This in turn means that other investors in the Issuer can have greater confidence that business risks are being shared more evenly between themselves and early supporters of the Issuer.

Section 2 – Listing Rules

1. Restricted securities are defined in NSX Operating Rule Definitions as securities issued by an Issuer:
 - (a) In consideration of, or in connection with, a service provided to the Issuer (or a related party) in relation to the Issuer's formation, promotion listing or the Issuer's offering of securities;
 - (b) For cash (or equivalent) if the person receives the cash (or equivalent) for the services mentioned in a);
 - (c) To a holder of restricted securities in substitution for them as part of a reorganisation of capital;
 - (d) Under a bonus issue in relation to restricted securities;
 - (e) On the conversion of restricted securities;
 - (f) That, in the Exchange's opinion, should be treated as restricted securities.
2. NSX Listing Rule 3.12 requires, in the case of a new applicant, that if the applicant has restricted securities on issue, it must enter into a restriction agreement with a security holder and, unless the security holder is listed on a stock exchange, any controller of the holder. The restriction agreement must be in the form required by the Exchange from time to time or as the Exchange directs.
3. NSX Listing Rule 4.5(15) requires signed copies of any restriction agreement be submitted to the Exchange upon application for listing¹.
4. NSX Listing Rule 6.28 states, as a continuing obligation, that an Issuer which issues restricted securities shall enter into a restriction agreement with the holder and, unless the holder is listed on a stock exchange, any controller of the holder. The restriction agreement shall be in the form required by the Exchange from time to time or as the Exchange directs.
5. Further, NSX Listing Rule 6.29 states, as a continuing obligation, that an Issuer shall:
 - (a) Ensure that all completed restriction agreements are given to the Exchange before any person acquires the restricted securities or any rights in relation to them;
 - (b) Comply with and enforce a restriction agreement;

¹ In normal practice this means that the Applicant will provide a restriction submission for the Exchange to consider (based on this practice note) as part of the application. Once the Person(s) to be restricted has been determined then the Applicant must provide the Exchange with the executed Restriction Agreements and the holding lock letter from the Applicant's share registry service. This part of the application process must be completed before the Applicant can be admitted to the Official List and before securities can be quoted and traded.



- (c) Provide to the Exchange a bank or recognised trustee's² undertaking to hold the certificate of a restricted security for the escrow period and not to release the certificate without the Exchange's written consent;
 - (d) Obtain a bank or recognised trustee's undertaking³ to hold the certificate of any equity security of a person (except a body listed on a stock exchange) that is required to enter into a restriction agreement and not to release that certificate without the consent of the Exchange;
 - (e) During the escrow period, not change an executed restricted agreement or ask for, or agree to release of a certificate by a bank or recognised trustee NSX Listing Rule 6.30 states, as a continuing obligation, that the Issuer must issue certificates for restricted securities and such certificate must state that the securities are restricted securities, are not quoted on the Exchange and the date on which they will cease to be restricted securities.
6. NSX Listing Rule 6.31 allows holders of restricted securities to participate in capital raisings and takeover offers.

Section 3 – What are Restricted Securities?

1. NSX generally regards securities issued to the following Persons as restricted securities:
 - (a) early investors (i.e. investors who were issued securities, or the right to subscribe for securities, prior to the Issuer being approved to list on NSX);
 - (b) vendors (i.e. Persons who have been issued securities in exchange for assets or services). This may include sellers of assets to an Issuer, professional advisers who accept securities for their services or promoters of the Issuer's capital raising;
 - (c) directors (current directors of the company).
2. The above descriptions are not exhaustive and NSX may regard securities issued to other types of Persons as restricted securities in certain circumstances. NSX may also not treat securities as restricted securities in certain circumstances. For example, if an Issuer has substantial assets and a good track record of profitability.
3. NSX makes the above assessments on a case by case basis taking account the circumstances of particular situations.
4. If an Issuer believes it may be issuing restricted securities the Issuer is encouraged to consult with NSX to determine whether NSX will treat the securities as restricted securities.

Section 4 – Method of Restriction

1. An Issuer must do one of the following in respect of restricted securities:
 - (a) Issue certificates in respect of the securities, the certificates must be placed with a bank or with a recognised trustee⁴, who must undertake to NSX not to release the certificates without NSX's consent; or

² The Exchange will accept the Issuer's Share Registry service letter for this purpose.

³ The Exchange will accept the Issuer's Share Registry service letter for this purpose.

⁴ The Exchange accepts the Issuer's Share Registry service for this purpose.



- (b) Enter the securities on the Issuer sponsored sub-register. The Issuer must obtain an undertaking from its registry to apply a holding lock to the securities to prevent any movement of the securities from the holding, and not remove the holding lock without NSX's consent.

Section 5 – Voting and Dividend Rights

1. The Exchange does not impose any special restrictions on the voting of restricted securities which carry a vote, or on dividends or distributions, unless the restriction agreement is breached. To be clear, if securities have voting rights, then those rights preserved. If securities have dividend rights, then those rights are preserved.

Section 6 – Release of Restrictions

2. When a company is the subject of a takeover bid, or to enable restricted securities to be transferred as part of a merger by scheme of arrangement, under part 5.1 of the Corporations Act the NSX may consent to the removal of a share registry holding lock with conditions. (NSX Listing Rules 6.31 applies)
3. NSX will not consent unless, to the extent they are applicable, all of the following conditions are met:
 - (a) In the case of a takeover bid, 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) In the case of a takeover bid, 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) In the case of an off-market bid, if the offer is conditional, the bidder and the holder agree in writing that the certificates will be returned to the bank or recognised trustee or a holding lock will be applied, for each restricted security that is not bought by the bidder under the off-market bid;
 - (d) In the case of a merger by way of scheme of arrangement under Part 5.1 of the Corporations Act, the holder and the Issuer in which the restricted securities are held agree in writing that the certificates will be returned to the bank or recognised trustee or a holding lock will be applied, if the merger does not take effect.
4. If the takeover or merger does not proceed, then the Issuer must undertake to re-establish the holding lock and restriction arrangements as currently in force.

Section 7 – Relief for Numerous Small Unrelated Parties

1. NSX is prepared to grant relief from escrow requirements to an Issuer with security holders that have small holdings (even if those security holder's securities should be restricted), on the grounds that to require the Issuer to provide restriction agreements executed by these security holders would impose an undue burden, and relief in these circumstances does not derogate from the principles which underlie escrow.
2. Whether relief will be granted and the form it takes will depend upon the circumstances and in the absolute discretion of the NSX.



3. As a general guidance, NSX will grant a relief from escrow requirements to unrelated security holders with small holdings in the Issuer if the below conditions are met:
- (a) the total number of unrelated small securities holders is 50 or more; and
 - (b) only for those unrelated small securities holders with holding less than 1% at total securities on issue by the issuer at listing; and
 - (c) the Issuer's nominated adviser provides a confirmation to the Exchange that the Nominated Adviser has completed sufficient due diligence to satisfy⁵ the Exchange that the small unrelated securities holders are unrelated to the Issuer.

Section 8 – What restrictions will apply?

1. NSX applies different types of restrictions depending upon the circumstances.
2. A guide to the approach taken by NSX is set out in the attached Guidance Table.

Person		Circumstances		Restrictions	
		Consideration for issue	Time of issue	Number of securities restricted	Escrow period (unless NSX fixes a different period)
Directors					
1.	Director includes any person who occupies the position of a director, by whatever name called.	<ul style="list-style-type: none"> a) Cash. b) Conversion of debt to equity. 	Before admission.	<ul style="list-style-type: none"> a) Securities to which the cash formula applies, the number of securities remaining after the application of the cash formula, unless NSX decides all. b) Other securities, all. 	24 months commencing on the date on which quotation of securities commences.
Seed capitalist					

⁵ The Applicant should include details as part of their restricted securities submission.



Person		Circumstances		Restrictions	
		Consideration for issue	Time of issue	Number of securities restricted	Escrow period (unless NSX fixes a different period)
1.	Seed capitalist who is one of the following at the time the Issuer applies for admission. a) A related party of the Issuer. b) A promoter ⁶ .	a) Cash. b) Conversion of debt to equity.	Before admission.	a) Securities to which the cash formula applies, the number of securities remaining after the application of the cash formula, unless NSX decides all. b) Other securities, all.	12 months commencing on the date on which quotation of securities commences.

⁶ A person is a “promoter” of an entity if they have had a material involvement in the formation or promotion of the entity. The NSX has the absolute discretion in deciding if a person is a promoter for the purpose of this document.



Person		Circumstances		Restrictions	
		Consideration for issue	Time of issue	Number of securities restricted	Escrow period (unless NSX fixes a different period)
2.	<p>Seed capitalist who is <i>not</i> one of the following at the time the Issuer applies for admission.</p> <p>a) A related party of the Issuer. b) A promoter.</p>	<p>a) Cash. b) Conversion of debt to equity.</p>	Before admission.	<p>a) Securities which are fully paid shares or units, for which the consideration per security was at least 80% of the price paid in any initial public offering at the time the Issuer applies for admission, none.</p> <p>b) Securities to which the cash formula applies, the number of securities remaining after the application of the cash formula, unless NSX decides all.</p> <p>c) Other securities, all.</p>	12 months commencing on the date on which the restricted securities are issued.



Person		Circumstances		Restrictions	
		Consideration for issue	Time of issue	Number of securities restricted	Escrow period (unless NSX fixes a different period)
Vendor					
1.	Vendor who is one of the following at the time of the acquisition of the classified asset. a) A related party of the Issuer. b) A promoter.	Classified assets.	Before admission.	All.	6 months commencing on the date on which quotation of securities commences.
2.	Vendor who is <i>not</i> one of the following at the time of the acquisition of the classified asset. a) A related party of the Issuer. b) A promoter.	a) Classified assets. b) Subscription for securities under a relevant agreement ⁷ to use cash paid for classified assets.	Before admission.	All.	6 months commencing on the date on which restricted securities are issued.
3.	Vendor who is a person referred to in rule 6.43 at the time of the acquisition of the classified asset.	a) Classified assets. b) Subscription for securities using cash paid for classified assets.	After admission.	All.	a) 6 months commencing on the date on which the last of the following events occurs. b) The restricted securities are issued. c) All restriction agreements are entered into.

⁷ Relevant Agreement as defined by Section 9 of the Corporations Act.



Person		Circumstances		Restrictions	
		Consideration for issue	Time of issue	Number of securities restricted	Escrow period (unless NSX fixes a different period)
4.	A vendor who is <i>not</i> a person referred to in rule 6.43 at the time of the acquisition of the classified asset.	a) Classified assets. b) Subscription for securities under a relevant agreement ⁸ to use cash paid for classified assets.	After admission.	a) If the vendor will have at least 20% ⁹ of the capital of the Issuer, all. b) In any other case, none.	a) 6 months commencing on the date on which the last of the following events occurs. b) The restricted securities are issued. c) All restriction agreements are entered into.
Promoter					
1.	Promoter.	a) Services. b) Subscription for securities using cash paid for services.	Before admission.	All.	12 months commencing on the date on which quotation of securities commences.
Professional, consultant					
1.	A professional or consultant to the Issuer.	a) Services. b) Subscription for securities under relevant agreement ¹⁰ to use cash paid for services.	Before admission.	All.	12 months commencing on the date on which quotation of securities commences.
A person under an employee incentive scheme					

⁸ Relevant Agreement as defined by Section 9 of the Corporations Act,

⁹ The calculation is made after the transaction. NSX may aggregate more than one transaction.

¹⁰ Relevant Agreement as defined by Section 9 of the Corporations Act.



Person		Circumstances		Restrictions	
		Consideration for issue	Time of issue	Number of securities restricted	Escrow period (unless NSX fixes a different period)
1.	A person who is one of the following. a) A related party of the Issuer. b) A promoter.	Employee incentive scheme.	Before admission.	a) Securities to which the cash formula applies, the number of securities remaining after the application of the cash formula, unless NSX decides all. b) Other securities, all.	12 months commencing on the date on which quotation of securities commences.
Any person					
1.	Any person to whom restricted securities are transferred.	Not applicable.	Before admission.	All.	For the balance of the escrow period that applies to the restricted securities.
2.	Any person.	a) Substitution for restricted securities on a reorganisation. b) A bonus issue in relation to restricted securities. c) The conversion of restricted securities. Payment of any outstanding amount on a partly paid restricted security.	Before or after admission.	All.	For the balance of the escrow period that applies to the initial restricted securities.



Section 9 – Cash Formula

1. The cash formula is:

In the case of ordinary securities,

$$N = (CP / IPO) * E$$

N = the number of securities or units not subject to escrow

CP = the total cash paid for the ordinary securities that would otherwise be subject to escrow, divided by the number of securities issued to the person

IPO = the price paid in any initial public offering at the time the Issuer applies for admission, or if there is no public offering, the price agreed by NSX.

E = the number of ordinary securities that would otherwise be subject to escrow

In the case of options which have the same terms as options offered with ordinary securities under any IPO at the time the Issuer applies for admission,

$$O = N * F$$

O = the number of options not subject to escrow

N = the number of securities or units not subject to escrow

F = the number of options per ordinary security offered under the IPO

3. If the cash formula results in a figure greater than 80%, no restriction will be applied.
4. If the cash formula results in a figure less than 80%, this percentage is applied to the number of securities held to determine the level of restriction.

Example 1:

5. A company issues securities to a seed capitalist who is not a related party of the Issuer or a promoter. The issue price under the IPO is \$1.00 per security.
6. If the issue price for the seed capitalist was 90 cents per security, no securities would be restricted because the consideration was more than 80% of the IPO price.
7. If the issue price for the seed capitalist was 70 cents per security, securities would be restricted because the consideration was only 70% of the IPO price. The cash formula would apply to work out the number of securities restricted, unless NSX decided all securities should be restricted.

Example 2:

8. If a seed capitalist paid \$4,000 for 10,000 securities and the IPO price of the same class of securities was \$1.00,

$$N = (4,000/10,000) * 10,000 = 4,000.$$

9. Therefore, 4,000 shares would not be restricted securities. 6,000 shares would be treated as restricted securities.
10. If the proceeds of the issue resulted directly in the Issuer holding net tangible assets that have a readily ascertainable market value, NSX may treat more, or fewer, securities as restricted securities depending on whether the market value was lower or higher than the amount of cash subscribed. If no market value can be demonstrated to NSX's satisfaction, all the securities may be treated as restricted securities.

Example 3:

2. Using Example 2, if in addition to the 10,000 shares the seed capitalist received 10,000 free attaching options and under the IPO subscribers received one free attaching option for each share subscribed, the following would apply:

$$O = 4,000 * 1 = 4,000.$$

3. Therefore, 4,000 options would not be restricted securities and 6,000 options would be treated as restricted securities.



Section 10 – Voluntary Restriction or Escrow

1. Sometimes voluntary restriction agreements are entered into by security holders with the Issuer in the absence of the Exchange's determination.
2. NSX's decisions on restrictions will not be influenced by the existence or form of these agreements.

Section 11 – Further Information

Further information can be obtained by contacting:

Market Operations
National Stock Exchange of Australia Limited
Email: Market.operations@nsx.com.au
Phone: (02) 9233 0100