



## MEMO

To: Board of Directors  
From: Company Secretary  
Subject: **EXPIRING SHARE OPTIONS**

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An 'option' [over shares] is a right to acquire a share in a company at a future time on certain conditions, most particularly by paying up the 'exercise price'.

Usually, when options are granted, the exercise price is an amount that is greater than the current price/value of the underlying shares. However, that difference is such an amount that it is a reasonable expectation that during the life of the option (ie, before its 'expiry date') the market price/value of the shares will become higher than the exercise price – so that on exercise the shares received are worth more than the exercise price paid up to the company [as new capital].

If a company is listed on the stock exchange it may also issue 'listed options'.

### **Options Expiry**

Once an option passes its expiry date it can no longer be exercised. Whether or not the holder paid any cash or other consideration for it (either at the time the option was granted by the company or, if listed, by buying it 'on market'); it has expired and is effectively worth nothing.

Apart from 'listed options' – considered separately below – it would be 'polite' for a company to write to optionholders some reasonable time before the expiry date to remind holders of the impending expiry and offer them the opportunity to exercise the options – and send an 'Options Exercise Notice' out at the same time.

There is no legal obligation with regard to expiring options, although a listed company should advise the market of unlisted options about to expire or which have just expired (through a market release), and an Unlisted Disclosing Entity should probably lodge a Disclosure Notice (Form 1003) with ASIC.

### **Listed Options**

For listed options (and other 'convertible securities') the ASX has a process in Appendix 6A for the company to inform optionholders of the impending expiry date of the options, and provide them with relevant information, as follows:

- 6.1 An entity must send a notice to each holder of quoted convertible securities at least 20 business days before the conversion date or expiry date of the option. The notice must include each of the following.



- (a) The name of the holder of the convertible securities.
- (b) The number of convertible securities held, and the number of securities to be issued on their conversion.
- (c) The conversion or exercise price.
- (d) In the case of options, the due date for payment.
- (e) In the case of options, the consequences of non-payment and, in the case of other convertible securities, the consequences of not exercising the right of conversion.
- (f) The date that quotation of the convertible securities will end (which is 5 business days before the expiry date for options or final conversion date for other convertible securities, unless there is a later maturity date).
- (g) The latest available market price of the underlying securities\*.
- (h) The highest and lowest market price of the underlying securities\* during the 3 months immediately before the notice is issued, and the dates of those sales.
- (i) The information required by (g), (h) and (j) in respect of all quoted securities that would be, if fully paid, in the same class as the underlying securities.
- (j) In case of options, the details of any underwriting agreement notified under rule 3.11.3.

\* ie, the shares which the options convert into

In addition, ASX Listing Rule 15.1.6 requires the company to give the draft “Notice of Expiring Options” to them to review/approve at least 5 business days prior to it being despatched to optionholders.

The final information pack sent to optionholders must be released to the market at the same time as sent to optionholders – L/R 3.17.

### **Indicative Timetable**

An indicative timetable for actions in relation to expiring listed options (including requirements of Appendix 6A) is as follows:



BUSINESS DAY	EVENT	DATE
- 6	Prepare Notice of Exercise of Options & cover letter to optionholders	Wednesday 19 January
- 5	Lodge Notice/letter with ASX to review	Thursday 20 January
- 2	Last date to process option transfers/snapshot register for Notice recipients	Tuesday 25 January
0	Despatch of Notice/cover letter & release on ASX	Friday 28 January
14	Lodge Appendix 3B (New Issue Announcement) with ASX	Thursday 17 February
15	Trading in options ceases on ASX	Friday 18 February
16	New shares trading commences on ASX on a 'deferred settlement' basis	Monday 21 February
20	Expiry date of options	Friday 25 February
35	Conversion of options into shares and enter into Share Register, despatch of Transaction Confirmation Statements*, 'deferred settlement' trading ends & confirmed/revised Appendix 3B to be lodged with ASX	Friday 18 March
36	Normal trading of new shares on ASX commences	Monday 21 March

\* despatch can occur up to 2 days later

### Options Not 'in the money'

Under clause 6 of Appendix 6A the expiring quoted options process/timetable need not be followed if either of the following applies:

- the convertible securities automatically convert; or
- the date is not the final conversion date or final expiry date and the convertible securities are not 'in the money' on the twenty fifth (25<sup>th</sup>) business day before the conversion or expiry date.

The expression " not 'in the money' " means that the options exercise price is *above* the current share market price – so it would not be worthwhile exercising as the shares could be bought cheaper on the market.

In such case the ASX provisions allow a company to apply for a waiver of the requirements of L/R 6.24 (ie, to give notice to optionholders as per Appendix 6A).

Such waiver application must state reasons/give undertakings such as the following:



- ❖ that the options are not currently 'in the money' nor, in the opinion of the Directors, are they likely to be in the foreseeable future
- ❖ that the Directors believe it would serve no purpose and, in fact, would cause shareholders' funds to be spent unnecessarily, if the requisite notice must be sent out
- ❖ should the waiver be granted the company will release to the market appropriate information in relation to the expiring options as would otherwise be sent to optionholders under clause 6.1 of Appendix 6A.

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**DISCLAIMER**

*The comments in this memo reflect some commercial aspects and observations on the matter experienced or observed by the writer in practice as he understands them. The information is given as a guide only and does not represent a definitive or legal view of any of the issues raised, covered or referred to and the reader is urged to seek his own professional advice on all aspects of, or pertaining to, this and any related matter.*