



## MEMO

To: Board of Directors  
From: Company Secretary  
Subject: **UNMARKETABLE SHARE PARCEL SALE**

---

For an ASX listed company a 'marketable parcel' of shares should have a minimum value of \$500 (see ASX Operating Rules Procedures). Normally a buyer cannot acquire a holding costing less than \$500, although for various reasons a shareholder can end up with a lesser value holding - most commonly because the share price has fallen.

### **Unmarketable Parcel**

An 'unmarketable parcel' is a shareholding worth less than \$500 which, for a holder, may be difficult and/or expensive to sell. As an ancillary matter, it may also be expensive for the company to maintain these small holdings (ie, with minimum share registry fees and other administrative costs).

At the company's current share price (\$1.60) there are 112 shareholders ("minority member") with an unmarketable parcel.

### **Alternatives**

The question is, how can we proceed to sell these small holdings?

The Corporations Act and/or the ASX Listing Rules provide alternative ways for a company to reduce the number of unmarketable parcel holders, generally by:

(1) sale of small holdings

or

(2) minimum holding buy-back.

Both or either are allowed, providing the process is available under the company's Constitution, the major difference being that:

under (1) there is no reduction in shares issued - they are just sold to another holder;

and

under (2) the shares bought back must be cancelled (Sec. 257H).



In our case our Constitution requires us to sell unmarketable parcels on market - not buy them back - see elaboration below.

## **Listing Rules**

The relevant ASX Listing Rule is L/R15.13 (*Small Holdings*) which allows a company to sell the shares of holders of unmarketable parcels, no more than once in any 12 month period, provided its Constitution makes provision for such and the following terms are followed:

- i) Shareholders must be notified in writing of the intended sale
- ii) Shareholders must be given at least 6 weeks' notice before the small holdings sale takes place
- iii) Shareholders must be given the ability to 'opt out' of the sale - ie, to advise that they wish to remain as shareholders
- iv) The company (or the purchaser/s) must pay the costs of sale
- v) The holding must still be an unmarketable parcel at the date of sale
- vi) Proceeds must be sent promptly to [former] holders after the sale.

In addition, the company must be careful not to imply [in the notice/letter] that because a holding is classified as being less than a 'marketable parcel' for the purposes of the Listing Rules, the parcel is not capable of being sold on market.

## **Our Constitution**

Rule 28 of our Constitution (*Unmarketable Parcels*) allows such sales - within certain parameters - for the company to dispose of unmarketable parcels of shares by aggregating them and selling them 'on market'.

For information, some other constitutions either allow the company to be the 'buyer' of these shares (ie, which amounts to a buy-back) or have a specific provision allowing a buy-back of unmarketable parcels (and cancellation of those shares).

## **Sale Price**

Determination of the sale price can vary depending on each company's constitution.

Our Constitution requires that the share sale price be a minimum of the volume weighted average share price (VWAP) for the 5 trading days immediately prior to despatch of a letter/notice to shareholders.

This, of course, could mean that the company has to outlay some funds itself if the share price falls below VWAP during the 6 week period, so ideally it should seek a broker (who, in any case, will earn a fee from selling the shares) that is prepared to underwrite the price.

However, it is noted that in some constitutions the sale price is that achieved on market after the 6 week period.



Furthermore, whilst not covered by our Constitution, market practice appears to be that if the shares are sold above the VWAP determined price then any additional amount realised is paid to shareholders.

### **Nominee Holdings**

At times nominee shareholding companies, who hold shares on behalf of a number of beneficial shareholders, enquire as to whether those beneficiaries are covered/ caught by such a facility - and if they provide the Company a list could we dispose of the those shareholdings.

The simple answer is 'no, the facility only applies to registered holders'. Moreover, the company would have already told the market what the maximum number of shares/holders held as unmarketable parcels is, and so it can't be changed. Also, if the sale process is underwritten, this could mean total shares for sale exceeding the underwritten number.

### **Approvals**

No shareholder or prior regulatory approvals or filings are required to undertake a sale of small holdings; it is simply a decision of the company's board.

The only ASX requirement is to announce the arrangement and results to the market.

### **Steps to Follow**

In summary, the steps suggested to be followed to undertake the sale of unmarketable share parcels are:

1. Formal board decision to proceed with sale of unmarketable parcels, and agreement to terms and conditions.
2. Undertake discussions with a stockbroker about who will pay what fees and the issue of underwriting the sale price if applicable.
3. Prepare letter to effected shareholders, giving at least 6 weeks' notice of 'closing date'.
4. Prepare Retention Notice (to accompany letter) for shareholders to return should they wish to retain their shares (ie, not have their shares sold).
5. Calculate minimum share sale price now, if applicable (otherwise, later - see 11. below).
6. Prepare announcement of the arrangement and actions / timetable and lodge with ASX (with copy of shareholder letter/notice).



7. Post letter and Notice to effected shareholders.
8. Record shareholders who return the Notice that they wish to retain their shares.
9. After 6 weeks arrange to sell the unmarketable parcels for all shareholders who have not otherwise notified - either the company sells on market or utilises a stockbroker to sell at agreed commission, etc. Best practice governance would suggest that it is preferable to use a broker. Check first that any holdings have not since the original letter become 'marketable parcels', because in that case those holders must be excluded from the sale.
10. A separate bank account should be opened to receive sales proceeds and to pay shareholders. Note: as many 'lost' shareholders may have unmarketable parcels it is common that many cheques are never presented; these funds are later disposed of as unclaimed monies.
11. If the sale price was not previously advised to shareholders (see 4. above) then it is the price actually realised on market.
12. If the minimum sale price (as per 4. above) is not reached then the company will have to pay the shortfall itself or any underwriter (broker) must meet the difference; any excess share sale price is conventionally passed on to the unmarketable parcels holders whose shares have been sold.
13. Prepare announcement of results and lodge with the ASX.
14. Prepare an explanatory letter to effected shareholders, setting out results and share price, etc.
15. Despatch cheques to holders whose shares were sold (ie, net proceeds of on market sale less costs, pro-rata'd over number of shares held).

---

**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.*