

Listing Decisions Series 12-1 - Whether Company A's proposed open offer would have to be made conditional on approval by Company A's shareholders in general meeting by a resolution on which the controlling shareholder would have to abstain from voting
(Published in March 2000) (Updated in April 2015)

Summary	
Name of Party	Company A - a listed company
Subject	Whether Company A's proposed open offer would have to be made conditional on approval by Company A's shareholders in general meeting by a resolution on which the controlling shareholder would have to abstain from voting
Listing Rule	Rule 7.24(5)
Decision	The proposed open offer would have to be made conditional on approval by Company A's shareholders in general meeting by a resolution on which the controlling shareholder would have to abstain from voting

Summary of Facts

Company A proposed an open offer of convertible loan stock. Upon full conversion of the loan stock, Company A's issued share capital would be increased by more than 50%. The offer of loan stock would be made to existing shareholders of Company A in proportion to their existing holdings.

Analysis

Although pro rata entitlements to shareholders are not normally subject to their approval, Rule 7.24(5)(a) provides that, if the proposed open offer would increase the number of issued shares ~~capital~~ or the market capitalisation of the issuer by more than 50%, it must be made conditional on approval by shareholders in general meeting by a resolution on which the controlling shareholder must abstain from voting.

Even though there would be no change in Company A's issued share capital at the time of the open offer and there was no certainty of any future increase in its issued share capital as a result of the open offer, the potential effect of the open offer would be to increase Company A's issued share capital by more than 50%. As such, Rule 7.24(5) would apply.

Decision

The proposed open offer would have to be made conditional on approval by Company A's shareholders in general meeting by a resolution on which the controlling shareholder would have to abstain from voting.