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Corporate Alert

Enhanced Placement Capacity for small and mid caps

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Amendments to the ASX Listing Rules now enable small and mid sized companies by special resolution at their AGM to increase their placement capacity from 15% to 25% of their issued capital. This gives them greater flexibility to raise additional capital by placements.

But they need to act swiftly at this year's AGM, if they want to take advantage of the new rules in the next 12 months.

Enhanced Placement Capacity

Generally, subject to exceptions, a company may only issue up to 15% of its issued share capital over a 12 month rolling period, without first obtaining shareholder approval. This is the company's usual Placement Capacity. Issues must be completed within 3 months of the date shareholder approval is obtained.

Under the Enhanced Placement Capacity, eligible companies may seek shareholder approval by special resolution at its AGM to place up to an additional 10% of its issued share capital. Issues under the Enhanced Placement Capacity must generally be completed within 12 months of the date that the shareholder approval was obtained.

The ability to issue securities from this Enhanced Placement Capacity (i.e. under Listing Rule 7.1A) is separate from and in addition to the ability to issue shares under the usual Placement Capacity (i.e. under Listing Rule 7.1). This means that if a proposed issue meets the requirements of the Enhanced Placement Capacity rules, a company can potentially choose whether to issue under the ordinary Placement Capacity or the Enhanced Placement Capacity, giving it greater flexibility.

Minimum issue price for Enhanced Placement Capacity securities

The issue price of any securities issued under the Enhanced Placement Capacity must not be at a discount of 25% or more to the volume weighted average price (**VWAP**) for the securities calculated over the last 15 days of trading before the issue date.

Eligible companies

A company is eligible to take advantage of the new Enhanced Placement Capacity rules where at the time of its AGM it meets both criteria of a two pronged test:

1. (**Market capitalisation**) - The company must have a market capitalisation of $300 million or less (excluding restricted securities and securities quoted on a deferred settlement basis). Market capitalisation will be calculated using the closing price on the last day of trading on which trades were recorded prior to the date of the AGM.
2. (**S&P/ASX 300 Index**) - The company must not be included on the S&P/ASX 300 Index. The ASX rebalances the list of these companies biannually and as a reference point, publishes the rebalanced list on the first Friday of March and September.

Companies that do not meet both criteria of the two pronged test, will not be eligible to take advantage of the Enhanced Placement Capacity and will be subject to the existing Placement Capacity under the existing Listing Rule 7.1

Shareholder approval

Eligible companies must seek shareholder approval by special resolution at its AGM to use the Enhanced Placement Capacity. A special resolution requires the approval of the resolution by at least 75% of the votes cast by members entitled to vote on the resolution.

The notice of meeting must disclose:

- (**Minimum price**) - a statement of the minimum price the securities can be issued for;
- (**Dilution risk and worked examples**) - a statement setting out the details of the 'economic and voting dilution' of existing security holders that may result from the issue of Enhanced Placement Capacity securities, such as the risk that the share price may be significantly less following the issue and that the issue price may be lower than the trading price on the issue date.

  This statement must also be accompanied by a table describing the potential dilution of existing security holders on the basis of at least three different assumed issue prices and base number of securities which the placement capacity is calculated. There must be at least one worked example showing the potential dilution on the basis that the issue price has fallen by at least 50% and the base number of securities which the placement capacity is calculated, as doubled.

  There are a number of ways this disclosure can be made. As the provisions are new, no 'best practice' has yet arisen and it has yet to be seen what boundaries ASX will impose on the various approaches towards disclosure.
- (**Purpose/use of funds**) - the purpose that the securities will be issued for including the intended use of funds;
- (**Issue date**) - the date that is 12 months after the date of the AGM, which is the date the securities may be issued by;
- (**Allocation policy**) - details of the allocation policy for securities issued under the Enhanced Placement Capacity;
- (**History of issues under an Enhanced Placement Capacity**) - if the company has previously obtained approval for an Enhanced Placement Capacity, then the number of securities issued in the preceding 12 months as a percentage of capital, and the details of each issue; and
- (**Voting exclusion statement**) - a voting exclusion statement which exclude shareholders who will participate in any proposed issue or obtain a benefit from any issue, from voting.

Disclosure requirements upon issue of Enhanced Placement Capacity securities

Under new Listing Rule 3.10.5A, if shares are issued under the Enhanced Placement Capacity, the company must immediately disclose:

- (**Dilution**) - details of the dilution to existing shareholders caused by the issue;
- (**Statement of reasons**) - where the securities were issued for cash consideration, a statement of the reasons why the securities were issued under the Enhanced Placement Capacity as opposed to (or in addition to) a pro rata issue;
- (**Underwriting arrangements**) - details of any underwriting arrangements, including any fees payable to the underwriter; and
- (**Other fees**) - details of any other fees incurred in connection with the issue.

The requirement for the inclusion of a statement of reasons has been to encourage companies to undertake pro-rata capital raisings which allow greater shareholder participation and minimise existing shareholder dilution in the alternative to institutional placements.

Taking advantage of the Enhanced Placement Capacity

Generally, companies wishing to take advantage of the Enhanced Placement Capacity will need to act swiftly by determining their eligibility and including the appropriate resolution and disclosure in their 2012 AGM notice. If approval is not obtained, it will have to wait until the 2013 AGM before it can seek the required approval.

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