

Changes to capital raising provisions of the ASX Listing Rules

The Australian Securities Exchange (ASX) has advised that amendments to the ASX Listing Rules relating to capital raisings by small to mid cap listed entities will come into effect on 1 August 2012.

The amendments follow industry feedback on proposals released for comment by ASX in April of this year.

According to ASX, the amendments have been implemented to strike a more complete balance between protecting shareholder interests and facilitating timely capital raisings and to ensure the capital raising competitiveness of ASX.

Capital raising activities

Listing Rule 7.1A, which comes into effect on 1 August 2012, allows small to mid cap listed entities to issue additional equity securities in circumstances where:

- the issuer has secured prior approval from ordinary security holders by special resolution at its annual general meeting (AGM) which approval will remain in force for 12 months from the date of the AGM;
- at the time the approval is given, the issuer is an “eligible entity” in that it has a market capitalisation of A\$300 million or less and is not included in the S&P/ASX 300 Index;
- the securities issued under the approval are not more than an additional 10% of the issuer’s issued shares calculated over a 12 month period (that is, 10% in addition to the existing 15% already available to all listed entities under Listing Rule 7.1);
- the notice of AGM that includes the special resolution discloses the additional information required by Listing Rule 7.3A, including information regarding the risk of dilution to existing ordinary security holders, the listed entity’s allocation policy for issues under the approval, and the potential purposes for which securities may be issued under the approval; and
- the securities issued under the approval must not be issued at a price that is less than 75% of the volume weighted average price of the securities calculated over the 15 trading days on which trades in those securities were recorded immediately before:
 - the date on which the issue price of the securities is agreed, or

Key issues

- Amendments to the capital raising regime for small to mid cap listed entities are effective from 1 August 2012
- Eligible issuers should consider including the necessary special resolutions in their notice of annual general meeting in order to be able to raise equity on short notice
 - the issue date (if the securities are not issued within five trading days of the date on which the issue price is agreed).

In addition, listed entities that obtain shareholder approval under Listing Rule 7.1A must disclose the additional information described in Listing Rule 3.10.5A and Appendix 3B each time they issue securities under the approval.

Distinctions between Listing Rules 7.1 and 7.1A

While the ability for an issuer to issue equity securities in excess of 15% of capital under Listing Rule 7.1 continues to apply, the additional regime introduced by Listing Rule 7.1A allows issuers a greater degree of flexibility in undertaking capital raising activities given that:

- consent under Listing Rule 7.1A remains in force for a period of 12 months from the date of the AGM whereas consent under Listing Rule 7.1 remains in force only for a period of up to three months after the date of the members meeting; and
- the identity of the allottees under Listing Rule 7.1A does not need to be disclosed at the time consent is sought whereas the identity (if known), or the basis upon which allottees will be identified, is required for an issue under Listing Rule 7.1.

New market practice

Although Listing Rule 7.1A does offer greater flexibility in many respects, we note that consent under Listing Rule 7.1A can only be sought at the issuer's AGM – unlike consent under Listing Rule 7.1 which can be sought at any meeting of members.

Given this limitation, we expect ASX listed entities to include the necessary Listing Rule 7.1A special resolutions in their notice of AGM even in circumstances where issues of equity securities are not under contemplation.

Contacts

Lance Sacks

Partner, Sydney
T: +61 2 8922 8005
E: lance.sacks@cliffordchance.com

Ada Ko

Senior Associate, Sydney
T: +61 2 8922 8045
E: ada.ko@cliffordchance.com

Jonathan Turnham

Associate, Sydney
T: +61 2 8922 8031
E: jonathan.turnham@cliffordchance.com

Paul Vinci

Partner, Perth
T: +61 8 9262 5504
E: paul.vinci@cliffordchance.com

Justin Harris

Partner, Perth
T: +61 8 9262 5503
E: justin.harris@cliffordchance.com

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

www.cliffordchance.com

Clifford Chance, Level 16, No. 1 O'Connell Street, Sydney, NSW 2000
Clifford Chance, Level 7, 190 St Georges Terrace, Perth, WA 6000
© Clifford Chance 2012
Clifford Chance

Abu Dhabi ■ Amsterdam ■ Bangkok ■ Barcelona ■ Beijing ■ Brussels ■ Bucharest ■ Casablanca ■ Doha ■ Dubai ■ Düsseldorf ■ Frankfurt ■ Hong Kong ■ Istanbul ■ Kyiv ■ London ■ Luxembourg ■ Madrid ■ Milan ■ Moscow ■ Munich ■ New York ■ Paris ■ Perth ■ Prague ■ Riyadh* ■ Rome ■ São Paulo ■ Shanghai ■ Singapore ■ Sydney ■ Tokyo ■ Warsaw ■ Washington, D.C.

*Clifford Chance has a co-operation agreement with Al-Jadaan & Partners Law Firm in Riyadh.