

As businesses continue to grapple with the large-scale downturn of the market and the economic uncertainty brought about by the coronavirus disease 2019 (COVID-19), market regulators have announced an extension of the temporary relief measures to the Australian Securities Exchange's (ASX) Listing Rules.

These measures aim to assist entities listed on the ASX to raise funds quickly to boost liquidity, shore up their financial positions and provide boards with more choice in considering recapitalisation options. The temporary measures will apply to all eligible capital raisings occurring on or after 9 July 2020 and up to 30 November 2020. The April waivers will continue to apply to capital raisings announced up to and including 8 July 2020.

The ASX temporary relief measures initially introduced on 31 March 2020 (with an expiry date of 31 July 2020) announced two class order waivers (Class Waivers). In short, these Class Waivers, subject to certain conditions, allow for a temporary extra placement capacity from 15% of securities on issue to 25% and remove the cap on non-renounceable rights to permit for the ratio of securities offered to be greater than one security offered for each security held.

Amendments to the ASX Temporary Extra Placement

The temporary extra placement capacity waiver from ASX raises the ASX Listing Rule 7.1 placement capacity limit from 15% to 25%. However, several conditions must be met. In summary, an entity must:

- Make a single placement of fully paid ordinary securities only
- Not ratify or replenish the extra placement capacity
- Make the placement in conjunction with an offer of securities under a pro rata issue or a security purchase plan (these securities must be issued at a price no greater than the placement price)
- Within five business days of completing the placement, announce to the market the results of the placement and detail the approach it took in identifying investors to participate and determine allocations in the placement
- Within five business days of completing the placement, supply to ASIC and ASX a detailed allocation spreadsheet

In accordance with the most recent announcement, security purchase plans will also require entities to introduce and clearly disclose scale back arrangements. This has been introduced to prevent security holders splitting holdings to obtain a larger offer. Notification of security purchase plans has also been extended from three business days after the closing date for the plan to five business days.

ASX Notification Requirements to Rely on Class Waivers

The application and approval process has been made more demanding with the recent announcement. For both temporary class waivers, an entity must:

- Give written notice (including by email) to the ASX (not for release to market) before offering any securities in the placement in question that it intends to rely on the waiver and explain the purposes for which the entity is seeking to raise capital and how they relate to the COVID-19 health crisis or its economic impact and its proposed allocation policies for the capital
- Receive written notice from the ASX that the notified circumstances are acceptable and, therefore, entitled to the benefit of the waiver
- When it announces the capital raising, provide a statement that it is relying on the waiver and explain the purposes for which it is seeking to raise capital and how they relate to the COVID-19 health crisis or its economic impact
- Complete the capital raising within a reasonable period of making the announcement

Additionally, for entities proposing to reserve the right to issue the shortfall remaining after a non-renounceable offer has been made, they must issue a proposed allocation policy to ASX.

ASIC Temporary Relief

ASIC has also provided temporary relief which currently remains in place to allow "low doc" placements, rights issues and share purchase plans where a listed company has been suspended for a total of up to 10 days (rather than five days) in the previous 12-month period. The entity must also not have been suspended for more than five days in the period commencing 12 months before the offer and ending 19 March 2020.

ASIC has not yet determined how long the relief will be available, but it states that 30 days' notice will be provided to the market before the relief is revoked.

Board Considerations

The further requirements now required by ASX combined with ASIC's guidance mean that boards will need to explain to the regulators the approach they have taken to allocations, and why they have done so, if they have not raised capital on a pro rata basis.

ASIC has also encouraged listed entities to follow the additional disclosure requirements required by the amendments to the temporary extra placement capacity waiver to all placements and share purchase plans, even if they are not relying on the Class Waiver. ASIC's new stance will no doubt put additional pressure on boards from their shareholders concerning allocation decisions.

Importantly, directors always need to ensure that the capital raising is in the best interest of the entity and that they are keeping the market informed by way of continuous disclosure (even when they are in suspension).

This client alert is not a complete summary of the ASX announcement. For more details on the Class Waivers, visit the ASX website.

Contacts



Ashley Rose

Partner, Sydney
T +61 2 8248 7879
E ashley.rose@squirepb.com



Mitchell Coote

Associate, Sydney
T +61 2 8248 7871
E mitchell.coote@squirepb.com



Rebecca Karpin

Law Graduate, Sydney
T +61 2 8248 7889
E rebecca.karpin@squirepb.com