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Proposed Changes to the ASX Listing Rules

The Australian Stock Exchange (ASX) has been reviewing its Listing Rules (LR) and has released three consultation papers setting out the proposed changes to its rules.

Many of the proposed changes are uncontroversial but the proposed rule changes contain several substantive changes relating to admission criteria and the provision of increased capital raising flexibility.

Summary of main proposed changes:

- IPO admission criteria - ability to list strategic investment vehicles, relaxation of spread requirements, increase in asset test threshold, abolition of 20c rule and better disclosure of best practice recommendations
- enhanced capital raising flexibility - changes to LR 7.1 (15% limit) for SMEs
- proposal to allow the issue of non-voting shares

Changes to Admission Criteria

Initial spread requirements

Currently, a significant hurdle for any new listing is the shareholder spread requirement which mandates at least 400 holders each having a parcel of the main class of securities with a value of at least \$2000 (500 holders where non-related parties of the company hold less than 25%).

ASX has proposed relaxing the minimum spread requirements so that companies may list where they have at least 200 shareholders (currently 400), each with holdings of at least \$2000 worth of shares.

The 'trade off' for the relaxation of the spread requirements is that the ASX will also require net tangible assets of at least \$4 million (currently, the threshold is \$2 million).

Removal of the 20c rule

The listing rules currently require that at the time of initial listing the issue price of all the securities for which the entity seeks quotation (except options) must be at least 20 cents in cash. The ASX proposes to remove this requirement together with the 20 cent minimum exercise price requirement for options.

Corporate governance disclosure

Corporate governance reporting for existing listed entities against the ASX Corporate Governance Council's best practice recommendations is based on the 'if not, why not' approach. Oddly, there are no listing rule requirements relating to corporate governance disclosure for entities applying for admission to the official list even though most disclosure documents for IPOs would typically comply with this requirement.

ASX has proposed amending LR 1.1 condition 13 to require companies to provide the market with relevant corporate governance disclosures at the time of admission.

Strategic investment vehicles (SIVs)

Traditionally, the ASX admission criteria has meant that companies whose primary activity is to seek active investment opportunities (i.e. investments in other companies) have been difficult to list. This is because ASX regards these entities as cash boxes. As a result a SIV will typically not be able to satisfy either the profits or assets tests for admission nor the 50% maximum cash test on a go-forward basis.

The ASX is proposing amendments to the listing rules to allow listings of SIVs that satisfy the following criteria:

- net tangible assets of at least \$500 million after deducting fundraising costs (currently the nta admission test is \$2 million for operating entities and \$15 million SIVs)
- primary activities consist of investing strategically in assets
- manages its investments in accordance with its investment mandate
- directors and key managers have appropriate experience based on funds under management.

In addition, the SIV will need to comply with additional monthly and annual reporting requirements.

Changes to ongoing requirements

Capital raising by small to medium enterprises (SMEs)

In substance, listing rule 7.1 restricts entities from issuing securities in any 12 month period if the number of those securities exceeds 15% of the total ordinary securities on issue at the commencement of that 12 month period, unless the company obtains shareholder approval or an exception to listing rule 7.1 applies (eg the issue is pro rata).

The ASX is proposing to allow SMEs (which it defines as an entity with a market capitalisation of \$100 million or less) to obtain at their AGM, a shareholder mandate to raise capital up to 25% of the amount of issued capital for a period of 12 months from the date of the AGM, without the need to obtain shareholder approval. This will be subject to a limitation on SMEs from raising capital in any 12 month period at a greater than 20% discount to the market price.

Share purchase plans (SPPs)

SPPs are a long-established mechanism for companies simultaneously to raise capital and reward long-term shareholders, by offering each shareholder the opportunity to purchase up to \$5000 of additional shares without a prospectus.

Announcing forward record dates for SPPs has caused some sellers to default on their T+3 delivery obligations in order to participate in the SPP to the detriment of the purchaser. Given that such offers are not pro-rata, buyers do not get the usual protections built in to ASX's settlement system. Accordingly, the ASX proposes to combat this problem by introducing a requirement that the SPP be open to all shareholders on the register on the day prior to announcement of the SPP.

Issue of non-voting shares

The Listing Rules presently entrench a 'one-for-one' voting right requirement.

In 1993, Newscorp instigated a review of voting structures by the ASX when it sought waivers or modifications to the listing rules entitling it to issue non-voting shares and shares with enhanced voting rights. Following vigorous public debate, the super voting shares proposal was dropped but the ASX granted a waiver to allow Newscorp to issue non-voting shares and has since provided similar waivers to other entities but in very limited circumstances.

The ASX has sought to reignite the debate regarding non-voting shares and has invited public comment on the issue. In the interests of capital raising flexibility, the ASX is considering allowing entities to issue non-voting ordinary shares, subject to the following conditions:

- the company's constitution does not preclude the issue of non-voting ordinary securities
- the company has disclosed the terms and conditions of the non-voting shares in its IPO documentation or has obtained shareholder approval for the issue in the previous 12 months

- the rights of the holders of non-voting ordinary securities are substantially the same as the rights of holders of voting securities, except for the voting power per security
- non-voting ordinary shares receive a dividend equal to or greater than ordinary voting shareholders
- non-voting shareholders receive equal voting rights in the following circumstances:
 - proposal to wind up the company
 - proposal to buy back or reduce voting ordinary capital.

Non-voting shares will be of interest to entities where the owners seek equity finance to pursue their business or strategic objectives but do not wish to cede control in the process. The proposal will be of particular relevance to entities that are, for example, family-owned entities, co-operatives or professional services partnerships that are considering listing to access the capital markets, but do not wish to relinquish control.

Further Information



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