

New Capital Raising Rules for ASX Listed Companies

New ASX Listing Rules for capital raisings by small to mid cap listed companies came into effect on 1 August 2012.

Corporate Commercial Update

In this paper we provide a detailed guide to the new capital raising rule – Listing Rule 7.1A.

Key points

- A company outside the S&P/ASX 300 having a market capitalisation of \$300 million or less may seek shareholder approval at its annual general meeting (AGM) to increase its placement capacity by 10%, in addition to the existing 15% annual limit.
- Shareholder approval (by special resolution) must be refreshed at each **AGM** to continue to take advantage of the increased placement capacity.
- The placement of the additional 10% can be at a maximum 25% discount to market price.
- Additional disclosure is required in the notice of meeting and in the Appendix 3B notice, including details of dilution and allocation policy.
- The new rules will be reviewed by the ASX after they have been in operation for 2 years.
- Eligible companies with a 30 June balance date should now consider whether they wish to seek shareholder approval of the new facility at their forthcoming AGMs.

Who does this affect?

Small to mid cap ASX listed companies.

Article Highlights

- Companies outside the S&P/ASX 300 with a market cap of \$300 million or less can seek approval during the AGM to increase its placement capacity by 10%.
- Shareholder approval must be refreshed at each AGM.
- Companies can avoid the associated time, expense and market risk of additional shareholder meetings by obtaining approval at the AGM.



How the new rule operates

Until now, listed companies have been prohibited from issuing or agreeing to issue more than 15% of their issued shares in any 12 month period without shareholder approval under Listing Rule 7.1 or unless an exception applies.

New Listing Rule 7.1A provides that a company not in the S&P/ASX 300 index and having a market capitalisation of \$300 million or less may seek shareholder approval at its AGM to increase its placement capacity by 10%, meaning the company may undertake a placement of up to 25% of its issued share capital for a period commencing on the date of shareholder approval and expiring on the first to occur of:

- the date that is 12 months after the date of the AGM at which approval was obtained; and
- the date of approval by shareholders of a transaction under Listing Rules 11.1.2 or 11.2 regarding a change to activities.

Key parameters in order to take advantage of the new rule

Market cap less than or equal to \$300m	The company must have a market capitalisation of \$300 million or less at the time the AGM is held (ASX recommends that a company provide its calculation of market capitalisation to ASX at the time it lodges its draft notice of AGM for review). ¹
Special resolution	The resolution to approve the increase in placement capacity must be approved by a special resolution (being a resolution passed by shareholders holding 75% of the shares voted at the AGM).
Refreshment ²	To continue the increased placement capacity from year to year, eligible companies must: <ul style="list-style-type: none"> • refresh shareholder approval at each AGM; and • not approve a transaction under Listing Rules 11.1.2 or 11.2 regarding a change to activities.
Maximum 25% discount to market price	The additional 10% can be issued at a maximum discount to market price of 25%, calculated by reference to the volume weighted average price (VWAP) of shares over 15 trading days immediately before: <ul style="list-style-type: none"> • the date on which the issue price of the securities to be issued is agreed; or • if the securities are not issued within 5 trading days of the date on which the issue price of the securities is agreed, the date on which the securities are issued.
VWAP calculation	The VWAP calculation must be provided by a recognised information service provider such as ASX Customer Service, Bloomberg and IRESS.
Additional disclosure	The company must make additional disclosure in accordance with new Listing Rules 3.10.5A and 7.3A in its notice of AGM and in the new Appendix 3B notice form when the securities are issued, and when any further approval is sought (see below).
Class of securities	The securities to be issued must be within an existing class of quoted equity securities.

1. It does not matter if the company's market capitalisation increases above \$300 million during the 12 month period following the AGM at which approval is obtained; however, if the company's market capitalisation stays above that level it will not be able to refresh its additional 10% capacity at the following AGM
2. Where a company seeks to refresh its increased placement capacity at a subsequent AGM, it must also disclose information about all issues of securities it made during the preceding year.

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Additional disclosure requirements

The level of disclosure the company is required to provide to the market in respect of any placement will depend on whether the company is:

- relying on its 15% placement capacity under existing Listing Rule 7.1;
- seeking shareholder approval of the placement for the purposes of existing Listing Rule 7.1; or
- seeking to utilise the additional placement capacity under new Listing Rule 7.1A.

For companies seeking approval of the additional 10% facility under Listing Rules

Minimum issue price	A statement of the minimum price at which securities may be issued taking into consideration the maximum discount to market price discussed above.
Dilution	The following details regarding dilution: <ul style="list-style-type: none">• a statement of the risk of economic and voting dilution that may result from an issue of securities, accompanied by a table describing the potential dilution to existing shareholders on the basis of at least three different scenarios, including at least one example where the number of securities on issue has doubled and where the market price of the securities has fallen by at least 50%; and• the percentage of the issued capital of the company represented by the securities issued under the placement, and the percentage of the post-placement issued capital held by the pre-placement securityholders.
12 month limit	The date by which the securities may be issued (being 12 months from the AGM) and a statement that the approval will cease to be valid in the event shareholders approve a transaction under Listing Rules 11.1.2 or 11.2 regarding a change to activities.
Purpose of issue	The purpose of the issue, including whether the company will issue any securities for non-cash consideration (e.g. in consideration for assets).
Allocation policy	The company's allocation policy for the issue, being disclosure of the allottees of the placement, or the basis on which the allottees will be determined addressing: <ul style="list-style-type: none">• how the entity intends to decide who to offer securities to under a placement under Listing Rule 7.1A;• whether the company has formed an intention to offer any of the securities to existing securityholders, or to a class or group of existing securityholders, or whether, alternatively, it has formed an intention to offer securities exclusively to new investors; and• whether it intends to give consideration to raising funds by means of a pro rata offer or a combination of a placement and pro rata offer.
Reasons for not undertaking pro rata issue	Where securities are being issued for cash consideration, details of why the company is undertaking a placement and not a pro rata issue or a combination of the two.
Underwriting	Details of underwriting arrangements, including details of fees payable to the underwriter.



Fees and costs	The fees and costs incurred in connection with the issue.
Voting exclusion	A person who may participate or obtain a benefit from the proposed issue (except a benefit solely in the capacity as a shareholder) and their associates are excluded from voting on the resolution to increase the placement capacity. The notice of AGM must include a voting exclusion statement to this effect. ³

Minimum issue price where securities issued for non-cash consideration

If a company is relying on Listing Rule 7.1A and is issuing securities for non-cash consideration, the company must still comply with the minimum issue price limitation. This means the company must determine the value of the asset being acquired and demonstrate that the deemed issue price of the securities issued in consideration of the acquisition of that asset is no lower than 75% of the VWAP of the securities calculated over 15 trading days immediately before the securities are issued.

The valuation of the assets may be provided by an independent expert, or by the directors of the company if they have appropriate expertise to carry out the valuation and their report contains a similar level of analysis to that which would be expected in an independent expert's report. We suggest that rarely will directors be in a position to give such analysis without undue risk.

Appendix 3B disclosure

The new Appendix 3B notice form requires additional information to ensure companies comply with the ongoing disclosure obligations associated with the new Listing Rule 7.1A described above. The additional Appendix 3B notice information is required once the company obtains shareholder approval under Listing Rule 7.1A.

The new format is designed to keep track of a company's issues of securities under both Listing Rules 7.1 and 7.1A, such that a company can at all times ascertain its overall placement capacity.

In particular, new Appendix 3B – Annexure 1 requires companies which have obtained shareholder approval under Listing Rule 7.1A to disclose the calculation of their placement capacity under Listing Rules 7.1 and 7.1A. This is required regardless of whether the particular issue is made under Listing Rule 7.1 or Listing Rule 7.1A.

3. For a person's vote to be excluded there must be more than a mere possibility that the person will participate in the proposed issue. It must be known that the person will participate in the proposed issue.



Recommendations

We recommend eligible companies now consider their capital raising options in time for the upcoming AGM season. These options now include:

- refreshing any issues of securities undertaken by the company in the past 12 months within its traditional 15% placement limit under Listing Rule 7.1;
- obtaining security holder approval for any proposed security issues in the 3 months following the date of the AGM within its 15% placement limit under Listing Rule 7.1;
- assuming the company is eligible, obtain shareholder approval to increase its placement capacity by 10% in accordance with Listing Rule 7.1A, in addition to the existing 15% annual limit; or
- not obtaining any approval of security holders and relying only on its 15% placement capacity under Listing Rule 7.1 for any security issues the company undertakes following the AGM⁴.

Observations

Compared to a capital raising made with the approval of shareholders under Listing Rule 7.1, the new rules require a significant amount of additional disclosure, both in the notice of AGM and when the securities are actually issued, which may deter some companies from utilising the increased placement capacity.

Eligible companies seeking to take advantage of the new rules must also determine at the AGM the discount (up to a maximum of 25% to VWAP) at which securities might be placed.

Companies considering seeking approval under the new rules will need to be mindful of any shareholder concerns as to dilution of interests and the cost of capital, particularly if the approval is sought for placements at the maximum 25% discount to VWAP.

Given the requirement for a special resolution to be passed, situations may arise where a significant shareholder or group of shareholders may be able to block a proposed 10% placement resolution in order to avoid dilution.

Notwithstanding the increased disclosure obligations and possible concerns by existing shareholders as to dilution, we consider the amendments are

4. A company may call an additional meeting of shareholders following its AGM to approve or ratify a placement in excess of the 15% limit.



7.1A, 3.10.5A and 7.3A, the notice of AGM must include:

commercially sensible and provide small to mid cap listed companies with greater ability and flexibility to raise capital by way of placement when the opportunity arises.

By obtaining approval under the new rules at the AGM a company should avoid the time and expense, and market risk, involved in calling an additional meeting of shareholders to approve or ratify a placement in excess of 15%.

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