

**Answer to question on notice:**

**HOUSE OF REPRESENTATIVES STANDING COMMITTEE ON ECONOMICS**

**REVIEW OF THE ASIC ANNUAL REPORT (SECOND REPORT) 2019**

**QoN: ASIC45QW**

A constituent has contacted me in regards to the issuing of capital as shares by Australian listed companies and noted the below. What is ASIC's view on this statement?

*"I have read recently that the ASX & ASIC last week lifted the percentage of shares an Australian listed company can issue out as capital in a placement from 15% to 25%. These shares are bought at a discount by institutions who are favoured clients of the underwriting investment bank appointed by the issuing company. Retail shareholders and SMSF's are excluded from this process. They may be able to participate in a share purchase placement at a later date, however even if they do their shareholding becomes diluted and low limits usually apply to these share purchase placements. If they are unable to participate in the placement because they don't have the funds their position obviously becomes even worse. I understand in the UK the limit on these placements for companies is 5% of their share capital. I suggest the government closely scrutinize this and adopt the UK position. This certainly doesn't pass the pub test particularly at a time when many small shareholders are struggling to stay afloat".*

**Answer:**

The COVID-19 pandemic created a sudden shock and financial stress for several sectors and companies impacting short-term liquidity. To ensure that companies could quickly raise the funds they needed to continue to operate during the COVID-19 emergency, ASIC and the ASX implemented temporary rule changes to facilitate secondary capital raisings in late March 2020. These measures were always designed to be temporary. As markets have now stabilised, the ASX class waiver that allowed placements of up to 25% of capital ceased operation on 30 November 2020.

To include all shareholders, placements relying on the additional 10% placement capacity were required to be followed by a rights offer or a share purchase plan (SPP). We acknowledge that SPPs are not a perfect solution to deal with all the concerns of retail shareholders, however it is worth noting that:

1. ASIC increased the SPP limit from \$15,000 to \$30,000 in 2019 to enable more shareholders to participate and maintain a pro-rata (or better) holding.
2. A number of issuers increased the size of their SPP where strong demand was received. Examples include NAB who increased their SPP from \$0.5bn to \$1.25bn and Cochlear who increased their SPP from \$170m to \$220m.
3. Retail investors are advantaged through an SPP, by being able to observe share price movements after institutions have participated. ASIC has observed that where the share price has risen above the SPP price, very strong demand may be seen, but in other instances where the share price is at or below the SPP price, the take-up may be low. Since March of this year, 43 companies have reported SPP participation rates. On average, 31.5% of eligible shareholders have submitted applications.

ASIC is also aware that some issuers (through their brokers who are leading transactions) are contacting retail brokers who have clients with large holdings to make some placement shares available for these shareholders. This can assist to reduce dilution for some large private shareholders for whom the full \$30,000 allocation in a SPP would still result in some dilution.

As market conditions stabilised during the year, ASIC has observed a few issuers (such as Sydney Airports and TABCORP) using a renounceable structure that enabled non-participating shareholders to either sell their rights on market or place them into a shortfall bookbuild and have any excess above the issue price from the bookbuild returned to them. This structure was less suitable in the early stage of the pandemic as the extreme volatility in equity markets made it difficult to secure underwriting on commercial terms given the retail portion of the rights offer would leave the underwriter exposed for around 4 weeks.

In relation to the UK, on 8 April 2020 the FCA announced (see [FCA Announcement](#)) a package of measures to assist companies in raising new share capital. The FCA directed market participants to review the guidance published by the Pre-Emption Group (PEG) on April 1 2020 (see [PEG Guidance](#)). The PEG recommended that investors consider supporting, on a temporary and case-by-case basis during the COVID-19 pandemic up until 30 September 2020, non-pre-emptive issuances of up to **20%** of issued share capital. This is an exception to the general rule for shareholder approval required for most placements. Normally, in the UK companies can issue up to 5% for general corporate purposes with an additional 5% for specified acquisitions or investments without shareholder approval. The recommendation was further extended to 30 November.

Other major jurisdictions such as the US and Hong Kong allow up to 20% of share capital to be placed without shareholder approval. The normal 15% placement capacity for ASX listed companies has been in place for a very long period of time and strikes a well-accepted balance between giving boards flexibility to raise capital and maintaining important investor protections.