Division/Agency: Australian Securities and Investment Commission
Question No: 15
Committee Member: Mr Bert Van Manen

Question:

Mr VAN MANEN: Commissioner Armour, you touched on this in your comments prior to lunch, about ASIC's role in providing fair and efficient market access to all participants in the listed space. In relation to that, I note with interest there was an article in The Courier Mail today and there was an article in the AFR about a week or 10 days ago in relation to the Bank of Queensland and ME Bank merger and the fact that the retail shareholders appeared to have missed out on an opportunity, given that there were only eight days between when the documents were lodged with ASIC and when the offer closed. The retail shareholders have subsequently missed out due to the delays in the mail. We all know that Australia Post processes at the moment are poor at best, to be polite. Why, in the current environment, would ASIC approve only an eight-day notice period and not have a much longer notice period to ensure that retail investors could take equal advantage of this and not just finish up in a situation where the big corporate banks that are backing this mopped up all those extra shares at the expense of the retail shareholders?

Ms Armour: I'm not aware of whether or not ASIC had any approval job to be done in this case. I'm happy to take that on notice. From our perspective, secondary capital raisings essentially require the directors of the company doing the raising to make a judgement about the most efficient and effective way for them to raise capital, having regard to a bunch of things, including fairness for the shareholders. I think that's an important principle for directors to apply their minds to, but they also need to think about why they're doing the raising. What are the needs of the company? What are the timelines? What is the criticality of it? They do have to bring some judgements to bear in those situations. In this case, this is a capital raising associated with an acquisition transaction, and one would expect that the boards take into account the range of circumstances, but I'm happy to go and have a look to see if we had any involvement in the circumstances of the secondary raising and any share appraisement plan that went with it.

Mr VAN MANEN: What concerns me in relation to this is that not all retail shareholders are necessarily on email. While I understand that is an option for a lot of people, it concerns me that those shareholders didn't even have the opportunity to make a decision as to whether or not they wanted to participate in it. Consequently, their shareholding gets diluted without them making any—

Ms Armour: It is a continuing balance that I think companies need to consider. I know there are people who have a view that a shareholder has a valuable entitlement to be offered additional capital. That's a view of one side of the spectrum. There's another view that, in fact, there is no such entitlement. What we like to see is issuers having the flexibility to develop their capital management plans, taking into account both the shareholders' needs and the company's needs. Mr

VAN MANEN: I'll be happy to take a more detailed response on notice.

Ms Armour: Yes.

Answer:

Bank of Queensland (BOQ) announced the acquisition of ME bank and the associated $1.35 billion capital raising on 22 February 2021. The capital raising was structured as an underwritten 1 for 3.34 accelerated pro-rata non-renounceable entitlement offer (Entitlement Offer) to raise $1.0 billion and an underwritten $350 million institutional placement (Placement). The funds from the capital raising were to be used to pay the cash acquisition price for ME Bank of $1.325 billion.

Structure of the offer

We reminded directors during COVID that when considering the timing and structuring of capital raisings that they continue to act in the best interests of the company (see: https://asic.gov.au/about-asic/corporate-publications/newsletters/market-integrity-update/market-integrity-update-covid-19-special-issue-31-march-2020/). This requires directors to balance a range of considerations such as the need for quick and certain capital, and the cost to and possible dilution of existing shareholders. For example, in this transaction we note BOQ had entered into a contract to pay ME Bank $1.325 billion in cash before the end of August 2021, so certainty of funding (provided by underwriting the equity raising) would be expected to be a key consideration.

We note that BOQ utilised a structure that enabled all eligible existing shareholders to participate via a $1.0bn non-renounceable entitlement offer. When a company uses an entitlement offer they have the choice of structuring it as either a renounceable or non-renounceable offer. A renounceable rights issue is generally seen as fairer and less coercive as it provides a mechanism for shareholders who do not participate in the offer (or do not receive the offer booklet in time) to potentially receive some compensation for any dilution as a result of shares being issued at a discount to the prevailing share price.

We note, however, that renounceable offers are far less common than non-renounceable issues. By way of example, from late March to October 2020, we noted only six out of sixty-nine entitlement offers (raising above $10m) were renounceable. For completeness, in the same period we noted that retail participation in all rights issues above $10m, that reported participation rates, was approximately 58%. This suggests that retail may not participate, for a whole variety of reasons, such as personal circumstances, even where they will make a certain profit.

From our engagement with industry we understand the reason for the preference for non-renounceable offers is that it is more difficult (or expensive) to locate underwriters and sub-underwriters for renounceable issues - as it is less likely that shortfall shares would be available at the (discounted) offer price. We also note that the timetable for renounceable issues is up to ten business days longer than non-renounceable offers, to allow for the retail rights trading window, which increases deal risk.

We do not dictate to company boards (nor should we) the choice of capital raising structure that they adopt. All rights offers provide retail shareholders with the opportunity to participate at the offer price, after they have had the opportunity to observe market trading post-announcement. However, this assumes that shareholders are aware that they have been made an offer.

Timing of the offer

We note that the issue in relation to the timeliness of postal delivery is not a new one. However, equity markets can be volatile and issuers also want to reduce the amount of time they are exposed to market risk.

The BOQ retail offer booklet was emailed to retail shareholders on Monday 1 March 2021 and physically mailed to investors who had not provided their email addresses on the same date. The offer closed on Wednesday 10 March 2021 – 7 business days after dispatch.

The ASX Listing Rules set out the timeline for entitlement offers. These timetables provide an opportunity for existing shareholders to participate but set time limits to reduce market and underwriting exposure periods.

Appendix 7A of the ASX Listing Rules requires that a retail offer must be open for a minimum of seven business days after the documents are sent. ASIC does not set or approve the timetable for individual transactions. BOQ met the minimum offer period required by the ASX Listing Rules.

We have noted issues as a result of reduced mail services in recent years. Listed companies are aware of these issues and actively encourage shareholders to receive company communications via email. This ensures that shareholders can received information in a timely manner. We note BOQ has been actively encouraging its shareholders to switch to electronic communications. A reminder was included in the AGM letter to shareholders dated 29 October 2020.

There are also cost saving and environmental benefits from reducing the amount of physical mail sent by listed companies. Our Moneysmart website recommends that shareholders sign up for email notifications: see: https://moneysmart.gov.au/shares. Shareholders can also use the services of a broker or financial adviser to keep them updated of developments impacting on their investments.

By signing up to email alerts this would ensure that shareholders do not miss communications from companies that they hold shares in.