Senate Standing Committee on Economics

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Budget Estimates, 2 June – 4 June 2009

Question: bet 149

Topic: Changes to Listing Rules

Hansard Page: Written

Senator Bushby asked:

1. ASX and ASIC are currently in discussions over changing listing rules to make it easier and cheaper for small companies to issue new shares. How is this progressing?
2. The ASX has advised ASIC that smaller firms will find it “particularly difficult” to raise funds in coming months as they compete with large companies raising funds to pay down debt and repair their balance sheets to weather the rest of the financial crisis. Are steps being taken to combat this, other than a change in listing rules?

Answer:

1. The proposed change under discussion is to ASX listing rule (LR) 7.1. This LR prohibits a company from issuing shares exceeding 15% of the shares it had on issue 12 months earlier without share holder approval. The policy rationale is to give existing shareholders rights to approve dilutive security issues.

LR 7.2 carves out from LR 7.1 pro-rata offers such as rights issues, and other offers for instance under share purchase plans and dividend reinvestment plans on the basis that such issues generally involve existing shareholder participation.

In essence LR 7.1 constrains the ability of companies to make placements (but not pro-rata offers) over a cumulative threshold (15%) without specific shareholder sanction.

ASIC is currently considering an amendment to LR 7.1 specially for ASX listed small to medium enterprises (SMEs). The proposal involves amendments to the LR to allow SMEs to issue up to 25% of their share capital without a limit on the potential discount of the price of the share offer. The proposal would be allowed on a rolling 12 month basis if the SME obtains approval to do so at the SME's annual general meeting. It would potentially result in SME's raising more funds through placements.

ASIC wrote to ASX in June 2008 citing a number of concerns with a similar proposal to which it invited ASX's further response. ASX responded in June 2009 and ASIC is currently considering ASX's letter in the context of broad policy issues about placements and investors participation in equity capital raising more generally.

2. Yes, ASIC has recently revised its policies to allow companies to raise capital in a more timely and cost-effective manner. Research indicates that the costs of equity capital raising for smaller companies are a higher proportion of funds raised than for larger companies. Accordingly while the steps taken by ASIC are not solely for the benefit of smaller companies it is anticipated that they may be particularly useful for such companies.

The steps taken by ASIC were announced on 18 June 2008. In brief these steps make capital raisings more efficient by allowing:

- existing shareholders in an ASX listed company to purchase further shares worth up to $15,000 in any 12 month period through share purchase plans without a prospectus;
- more rights issues and placements using a cleansing notice instead of a prospectus, even if a listed entity has been suspended for more than the current five day maximum period;
- shareholders to participate in accelerated rights issues and right issue shortfall facilities even if they exceed the twenty per cent takeover threshold by doing so;
- a person to underwrite a dividend reinvestment plan even if they exceed the twenty per cent takeover threshold by doing so.

These steps have been implemented in some instances by ASIC issuing class order relief changing the manner in which the Corporations Act operates and in others by ASIC indicating its willingness to grant individual relief if a company applies.

ASIC expects companies to meet their obligations under the Act and terms of the relief to ensure that the market is fully informed, investors are fully informed before they agree to buy securities and there is minimal risk of any unacceptable change of control resulting from the equity capital raising.

The relief extends to managed investment schemes as well as to companies.