Institute supports ASX exposure draft on new capital raising

The ability of companies to raise new capital without shareholder approval is undergoing some necessary changes.

The Institute has supported a number of proposals contained in ASX’s Exposure Draft: Capital Raising Mechanisms in a Disclosure-based Market—ASX Proposals for Informed Choice.

The Exposure Draft proposes to amend certain aspects of Chapter 7 of the Listing Rules and the timetables for pro rata offers. Initially the amendments were due to take effect on 30 January 2004. However, it is now expected that the proposed amendments will take effect in the first half of 2004.

The main proposal is to amend the Listing Rules to increase the percentage of capital that may be issued without investor approval from 15% to 20%.

With certain exceptions, currently Listing Rule 7.1 limits the ways in which listed entities can quickly issue large numbers of equity securities, as issues exceeding 15% of the entity’s issued share capital in 12 months must either have the approval of holders of ordinary securities or be made as a rights issue. The constraint on the ability of a listed entity to raise capital quickly and flexibly is causing inefficiencies in the market.

In our submission to ASX, we stated that the proposed increase in the placement threshold is consistent with international practice and supports improved capital raising opportunities, particularly for companies with small capitalisation to engage in flexible capital raising activities with swiftness and certainty. Indeed, the ability to raise up to 20% of capital without shareholder approval will assist small listed companies to grow more quickly.

However, to address concerns about the dilution of existing shareholders’ interests, we suggested that ASX consider placing a cap on the discount of the issue price of the securities.

Generally, it is accepted that the greater the discount of the issue price, the greater the degree of dilution to non-participants. A waiver could be sought (and granted) where companies were unable to attract capital within the discount cap.

‘Jumbo’ offerings allow issuers to raise more than the materiality threshold of capital without shareholder approval by combining an unconditional placement, a partial conditional placement (subject to shareholder approval) and a small rights issue to all shareholders.

The Institute supports these arrangements for large capital raisings as they provide for flexible and certain capital raising for issuers and access to participation for all shareholders.

However, we have concerns regarding the level of disclosure, particularly at the time of the placement component of the raising. Accordingly, in our submission, we proposed that ASX should continue to use the waiver provisions in the Listing Rules in relation to jumbo offers.

Instead of introducing an exception in the Listing Rules for jumbo offers, we believe that this approach would ensure that these offers are monitored for adequacy of disclosure, rights of all shareholders and a preference for pro rata rights issues and placements within the 20% rule.

Other proposals included in the ASX Exposure Draft include:

- Amending the Listing Rules to give investors the ability to confer a general mandate on a company to issue securities with an unlimited discretion for a period of up to 13 months;
- Reducing the timetable for both renounceable and non-renounceable pro rata issues from 40 days to 23 days;
- Introducing exceptions from the threshold rule for share purchase plans (SPPs), dividend reinvestment plans (DRPs), issues under takeovers and ‘jumbo offers’.

In our submission, we acknowledged that the proposed amendment to confer a general mandate of up to 13 months is well entrenched in market practice and strikes the appropriate balance between regulatory control and flexibility for companies.

However, given the potential size of capital increase, we suggested that ASX consider approval being given by way of a special resolution to better support shareholders’ rights and imposing a cap on the quantum of securities that can be issued under the general mandate.

The Institute also supported the proposal to shorten the timetable for pro rata issues by 42% from 40 days to 23 days as this will provide listed companies with more flexible capital-raising mechanisms and encourage the use of rights issues as a viable form of capital raising.

We also supported the proposal for the exception for securities issued under a SSP. However, we proposed that a limitation be introduced so that shareholder interests can be protected.

Generally, the Institute believes that the ASX’s proposals will promote market integrity, facilitate greater efficiency in the capital raising activities of listed companies and assist greater participation for all shareholders.

All listed companies will have flexibility as to the form of capital-raising and shareholders will receive the benefits of streamlined capital raising mechanism.