

Article Information

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How to raise capital using ASX's new temporary capital raising relief rules

As previously foreshadowed, ASX has just announced temporary capital raising relief measures for listed entities who need to raise capital given the effects of the COVID-19 pandemic. We anticipate many entities will take advantage of these methods of fundraising in coming weeks, particularly where directors are concerned about the short to medium term cash flow impacts of the COVID-19 health crisis and government imposed restrictions on people's movements and activities.

Placement capacity now 25%

ASX has lifted the placement capacity under listing rule 7.1 **from 15% to 25%** conditional on:

- entities also making a follow-on pro rata entitlement (rights) offer; or
- entities also conducting a follow-on offer to retail investors under an SPP,

in each case at the **same or lower price** as the placement price.

The temporary class waiver applies **until 31 July 2020**, unless extended by ASX.

Extended trading halts

To further assist entities to conduct urgent capital raisings, ASX has also announced that:

1. it will allow two consecutive back to back trading halts, thereby giving listed entities 4 consecutive trading days to conduct the raise, but if further time is required ASX has stated that the entity will need to consider a voluntary suspension; and
2. it has also relaxed the requirement in listing rule 7.11.3 for non-renounceable rights offers to allow them to exceed the ratio of 1 share offered for each share held.

Conditions applicable to extended placement capacity

Additional conditions to the Temporary Extra Placement Capacity Waiver (**TEPCW**) are:

1. the placement and retail offer must relate to fully paid ordinary shares;
2. the TEPCW only allows a single placement;
3. the Temporary Extra Placement Capacity (**TEPC**) cannot be replenished under listing rule 7.1 or 7.4
4. for companies that already have an additional 10% placement capacity approved under listing rule 7.1A they may utilise either that capacity or the TEPC (or a combination of both), but may not issue shares under placements under either listing rules 7.1, 7.1A or the TEPC if such placements exceed 25%;
5. to the extent a company has already use some of its listing rule 7.1 and 7.1A capacity the TEPC only allows it to issue further shares up to the 25% aggregate placement capacity.

ASX has also issued a reminder to all listed entities that the continuous disclosure rules require any entity which has committed to proceed with a capital raising to announce it to the market.

Suspension and price relief for SPPs

ASX has also granted further relief for listed entities whose securities have been suspended for more than 5 days in the 12 months prior to the date of the issue to conduct an SPP, provided that:

- if the SPP is preceded by a placement the price of shares offered under the SPP is not greater than the placement price;
- if the SPP is not preceded by a placement that the price is such price as the directors “reasonably determine”;
- any scale back arrangements are both pro rata and disclosed in the SPP offer booklet; and
- if there is a limit on the amount raised under the SPP the entity must use its best endeavours to ensure that SPP participants have a reasonable opportunity to participate “*equitably in the overall capital raising*” (our emphasis).

Capital raising and directors’ duties

In our view, in light of the qualification set out above, directors will need to carefully consider any proposed SPP and weigh up:

- the size of any maximum participation restriction relative to the size of the institutional placement,
- past levels of shareholder participation in SPPs;
- the time permitted for participants to subscribe for shares in the SPP;
- the urgency of the entity’s funding requirements; and
- if there are alternative capital raising methods that may be more equitable and still meet the entity’s requirement for additional funding.

It is also critical to emphasise that each director continues to be bound by their statutory and fiduciary duties, and that any capital raising not be considered in isolation from those rules. Any offering that involves major shareholders increasing their percentage holding and the dilution of other shareholders may raise significant conflicts of interest that must be carefully managed by directors. Piper Alderman’s further guidance on directors’ duties and the management of this key conflict is set out in [Emergency Public Company Capital Raisings During COVID-19 Crisis](#).

Piper Alderman’s Corporate and Securities Team

The Piper Alderman team is at the leading edge of the law and strategy around emergency capital raising and can guide:

- directors;
- independent board committees;
- underwriters; and

Piper Alderman has comprehensive and current insight into the changes to the ASX listing rules and ASIC class order relief.