Chapter 5: Dealing With Capital

OVERVIEW

This chapter deals with changes to an entity's capital. In particular, it focuses on the issue of new securities and reconstructions.

As changes to capital often raise complex issues, entities are encouraged to discuss proposals to change their capital with the Exchange before proceeding.

New Issues

5.1 If an entity issues, or agrees to issue, further equity securities it must do so in accordance with the Corporations Act, any other relevant statutory or common law requirements and any additional requirements under the Listing Rules.

5.2 Subject to rule 5.4, an entity must not issue, or agree to issue, further equity securities if the number of equity securities on issue would exceed a number calculated as follows:

$$[(A + B - C) \times 15/100] - D$$

where:

A = the number of fully paid ordinary securities on issue twelve months before the date of the issue or agreement;

B = the number of fully paid ordinary securities issued in the twelve months before the date of the issue or agreement under an exception in rule 5.4;

C = the number of fully paid ordinary securities cancelled in the twelve months before the date of the issue or agreement; and

D = the number of equity securities issued, or agreed to be issued, in the twelve months before the date of the issue or agreement to issue not under an exception in rule 5.4.

5.3 The Exchange may issue a guidance note to provide entities with further information on how to comply with rule 5.2.

5.4 Rule 5.2 does not apply to an entity in relation to:

(a) an issue, or agreement to issue, that has been approved by the holders of ordinary securities;

(b) a pro rata issue to holders of ordinary securities;

(c) an issue to an underwriter of a pro rata issue under the underwriting agreement that applies to the pro rata issue;

(d) an issue on the conversion of convertible securities;

(e) an issue under a takeover offer or scheme of arrangement;

(f) an issue to fund the cash consideration for acceptances of a takeover offer, takeover announcement or scheme of arrangement (provided the terms are disclosed in the takeover or scheme documents);

(g) an issue under a dividend or distribution plan (provided the terms of the plan have been approved by the holders of ordinary securities);

(h) an issue under an employee incentive scheme (provided the terms of the plan have been approved by the holders of ordinary securities);

(i) an issue of preference shares which do not have any rights of conversion into another class of equity security; and

(j) any other issue approved by the Exchange for the purposes of this rule.

5.5 Where a meeting is called of holders of ordinary securities to approve an issue or agreement under rule 5.4(a), the entity must specify or include in the notice of meeting such information as is required by the Exchange and otherwise comply with any requirements of the Exchange in relation to the meeting.

Reorganisations of capital

5.6 If an entity proposes reorganising its capital it must:

(a) consult with the Exchange for the purpose of ensuring an orderly market is maintained in its securities;

(b) keep the Exchange well informed of the steps it is taking to effect the reorganisation and its progress with them;

(c) provide equity security holders with details of the proposed reorganisation and its likely effect on them; and

(d) otherwise comply with any requirements of the Exchange in relation to the reorganisation.

Buy-backs

5.7 An entity that is not subject to the buy-back provisions of the Corporations Act may only undertake an on-market buy back of its securities if the Exchange agrees to the entity conducting an on-market buy-back and it complies with any requirements the Exchange has in relation to the conduct of the buy-back.

5.8 If the Exchange agrees to an entity conducting an on-market buy-back under rule 5.7, it may require the entity to comply with the Corporations Act as if it were a company with any adaptations the Exchange regards as appropriate in the circumstances.