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Insights

IS IT TIME TO CONSIDER CASH BOX PLACINGS AGAIN TO RAISE CASH QUICKLY?

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SUMMARY

Despite the cash box being a structure which has seldom been used since March 2015 due to concerns raised by investor bodies, the urgent need for cash in uncertain times may lead to a revival of this once popular structure.

What is a cash box placing?

A cash box placing is a useful mechanism for UK companies needing to raising funds quickly, allowing issuers with unused “standard” AGM authorities to issue a much larger proportion of their share capital than would otherwise be the case than if they were to rely on the general disapplication of pre-emption rights which is typically limited to approx. 5% of its share capital.

The cash box structure gives companies the ability to raise enhanced amounts of cash without the need for a circular or shareholder meeting and the consequential delay, market risk and expense.

In addition, the use of a cash box structure will generally allow the issuer to create distributable reserves from the issue by making use of merger relief.

Main Market issuers

Provided the issue of new shares (together with other issues made over a 12 month period) is for less than 20% of the issuer’s existing share capital, a prospectus will not be required for a cash box placing either. For this reason, a cash box placing is typically used by Main Market issuers to raise less than 20% of their existing share capital without the need for shareholder approval or a prospectus.

Main Market issuers should however remember that under the Listing Rules a placing cannot be priced at a discount of more than 10% to the relevant shares’ middle market price unless the terms of the offer have been approved by shareholders or it is an issue for cash under a pre-existing general disapplication authority (such as the 5% authority typically granted annually at the AGM).

AIM issuers

Because AIM is not a regulated market, the 20% restriction after which a prospectus must be published does not apply to AIM issuers. An AIM issuer is therefore able to exploit the whole of any unused allotment authority granted at its AGM, which is typically set at a third of its share capital.

The AIM Rules also impose no limit on the discount at which any equity fundraising can be undertaken.

Directors' duties

The issuer's directors need to satisfy themselves, when approving the use of a cash box structure, that its use is compatible with their fiduciary duties. While the subject of some debate in the past, experience suggests that where a cash box is used to execute a necessary or desirable fundraising, directors are able to reach this conclusion.

Pre-emption Group limits

The Pre-emption Group does not approve the use of cash box structures to avoid pre-emption rights and therefore regards a cash box transaction as being, in substance, an issuance of equity securities for cash and subject to the limits set out in the Pre-emption Group Statement of Principles. Issuers wishing to exploit the ability to up-size a placing through a cash box structure must be prepared to ignore these principles but may choose to do so if there is an urgent need for cash. This decision can be made easier where the placing is being made to, or primarily to, its existing major shareholders and the directors can take some comfort in doing so from such shareholders' participation in the placing.

Mechanics in summary

Step 1: The issuer establishes a Jersey company ("Newco") with two classes of shares – ordinary and redeemable preference shares. The issuer's investment bank/broker subscribes for some of the ordinary shares (usually in excess of 10%) and the issuer will hold the remainder, usually representing less than 90%, if merger relief is desired.

Step 2: The investment bank/broker agrees to subscribe for redeemable preference shares issued by Newco at an aggregate price equal to the net placing proceeds and undertakes to pay the subscription price for the redeemable preference shares to Newco conditional on the admission of the placing shares.

Step 3: The issuer agrees to allot the placing shares to the placees (or to the investment bank/broker itself where the placing is being underwritten and is not fully subscribed) in consideration for the transfer to it (under put and call arrangements) by the investment bank/broker of the redeemable preference shares and ordinary shares in Newco subscribed by the investment bank/broker with the net proceeds of the fundraising.

Step 4: Placees pay the investment bank/broker for the placing shares and the investment bank/broker uses the monies received to discharge its obligation to subscribe for the redeemable preference shares in Newco.

Step 5: The issuer completes the purchase of the ordinary shares and redeemable preference shares in Newco under the put and call arrangements such that it holds all of Newco's shares and removes the net placing proceeds from Newco either by redeeming the preference shares or by Newco lending the proceeds to the issuer.

Structural flexibility

Cash box structures are flexible and can be adopted in conjunction with all forms of equity fundraising (e.g. rights issues and alongside open offers) depending upon the commercial outcome sought: A cash box rights issue will respect pre-emption rights while rebuilding an issuer's distributable reserves. A cash box placing (not subject to claw-back) with a related open offer can be used to allow shareholders who are not placees to subscribe at the placing price and limit their dilution while assuring the issuer of a rapidly-completed principal fundraising.

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