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ARTICLES

Rights issues versus placements in Australia: Regulation or choice? – Howard W Chan and Rob Brown

Listed companies seeking “once-off” new equity capital can choose either a rights issue or a placement. This decision has been studied in the United States and the United Kingdom but, as far as we are aware, ours is the first academic study of this decision by listed Australian companies. The institutional framework in Australia differs in significant respects from both the United States and the United Kingdom, with the result that in Australia the listing rules appear to have a greater influence on decision-making. We examine the decision using data on 1856 placements and 326 rights issues in Australia during the period July 1996 to March 2001. During this period, the ceiling on the issue of new shares by placement without shareholder agreement was increased from 10% to 15%, providing a rare opportunity to test the effect of the ceiling on corporate behaviour. Our conclusion is that most companies prefer a placement that does not require shareholder agreement to other methods of raising new equity capital. This finding was confirmed by strong evidence that many companies tailor a new issue so that the amount sought falls just below the ceiling specified in the listing rules. We find that “voluntary” rights issues are rare, and there is some evidence that companies making such issues tend to be either significant “winners” or significant “losers” in the previous 12 months. Finally, it is probable that companies making placements that require shareholder agreement tend to be smaller companies. 301

Piercing the “veil of obscurity” – the decision in *Hanel v O’Neill* – Jeremy Cooper

Following the popularity of the trading trust in the 1970s, there was a general recognition that legislation was required to level the playing field in favour of trust creditors. Legislation (now reflected in *Corporations Act 2001* (Cth), s 197) came into effect in 1986 imposing liability (jointly and severally with the corporation and other directors (if any), subject to s 197(2)) for debts and other trust obligations on directors of corporate trustees in certain circumstances. The recent decision in *Hanel v O’Neill* has, however, brought into question the scope of that liability. The original basis on which the corporate veil was to be pierced in the case of corporate trustees seems to have been obscured during the legislative “simplification” and economic reform programs of the 1990s. A legislative clarification of the scope of that liability is now required. 313

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