

Current market practice trends in rights offerings

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The unavailability of bank debt and the tighter Eurobond market during the global financial crisis have led to companies increasingly turning to rights issues as a means of raising finance. UK rights issues in 2008 and 2009 can be divided into broadly two categories:

- To repair balance sheets and/or to avoid covenant breaches (including in a number of cases with related debt refinancings).
- For acquisitions or other possible opportunities.

In particular, deals in the banking and real estate sectors have been driven primarily by the need to shore up balance sheets, while in 2009 an increasing number of deals could be seen as being for acquisitions/opportunities.

The renaissance in the use of this product (including combining rights offerings with other equity issues), and the fact that some high profile rights issues in 2008 suffered from very low take up and were conducted against the backdrop of a highly volatile market, have thrown up both a number of issues and a zeal for reform.

The recent trends in rights issues need to be seen in light of the Report to the Chancellor of the Exchequer in November 2008 by the Rights Issue Review Group. The Group was asked to examine aspects of current market practice (including short selling) and report back on measures which could be taken to make equity capital raising more efficient and orderly. The results have included a shortening in the timetable for rights issue and revised guidance by the Association of British Insurers (ABI) on the ceiling on allotments (it was increased in early 2009 to two-thirds of issued share capital where the additional one-third headroom is used for fully pre-emptive rights issues).

Some of the main drivers of market practice developments on rights issues have been:

- **Underwriting practices.** Changes in attitudes to risk by underwriters have led to evolution in underwriting practices.
- **Institutional investor concerns.** Institutional investors favour rights issues, on a pre-emptive basis and conferring a tradeable right, to non-pre-emptive placings. They have been concerned that the pre-emption concept might disappear or lose value (for example, if greater flexibility is introduced for placings) at a time when share prices are low and when, combined with the high level of discount, this could detrimentally affect their position. Addressing these concerns has fuelled structuring reforms.

- **Disclosure and timetable.** The level of disclosure (and attendant due diligence) required for a rights issue has been the subject of review, balanced against the desire to get the rights offering process completed as swiftly as possible.
- **Regulation of short selling.** Issuers and underwriters are increasingly focused on the impact of short selling on transactions and attention to this has resulted in regulatory reforms and corresponding changes in market practice.

This article examines each of these areas, looks at some of the main market practice points and reviews the status of market reform initiatives.

CHANGES IN UNDERWRITING PRACTICES

Pre-marketing

The practice of “pre-sounding” investors, to get an indication of interest in a particular credit ahead of a capital raising exercise, has become more prevalent as the financial crisis has unfolded. Market practice on pre-marketing has also evolved significantly on rights issues. In the past, pre-marketing was traditionally conducted over a period of a few hours. It may now last up to a week. This is partly because the number of companies seeking to raise new money through rights issues means that institutional investors do not have the funds to take up their rights in every company launching a rights issue. The decision to launch an offering may depend on whether the banks believe that enough of the existing holders may be in a position to take up their rights.

The risk of price sensitive, non-public or inside information being disclosed to an investor, with that investor being brought over the wall (that is, informed of the proposed rights issue before launch) and made an insider, needs to be managed carefully:

- Some investors do not wish their trading in a particular credit to be fettered by becoming an insider, so where inside information is to be imparted to an investor during a pre-marketing exercise, this fact should be made clear at the outset of the conversation before the issuer’s name is mentioned.
- Usually, investors are advised of the potential transaction using a recorded telephone line, based on a script (thereby avoiding the need for a confidentiality or non-disclosure agreement). Occasionally, meetings with a limited number of investors may be held in person and no materials would be left with investors.
- The use of specialist websites where investors can view materials but are unable to download or print the information can also be considered.

- Banks also need to manage internal potential and actual conflicts carefully where information relating to one proposed equity issue is relevant to another (for instance in the same sector).

Additionally, the launch of rights issues is often timed off the announcement of results. In such circumstances, investors want to receive details of the forthcoming results, which can potentially cause concerns under the Financial Services and Markets Act 2000 (FSMA) and/or Disclosure and Transparency Rules (for example, issuers need to be comfortable that they can delay disclosure of and/or selectively disclose their results as part of pre-marketing in reliance on DTR2.5.3R(1), where arguably the relevant inside information to which that rule applies is that the issuer is contemplating a rights issue, not the contents of its results).

Before commencing pre-marketing, the underwriters should also consider how they would be able to “cleanse” investors of the inside information if the pre-marketing is not successful and the rights issue does not launch. In such circumstances, a non-published communication to the investors that no capital raising will be undertaken is unlikely to be sufficient, as such investors will still be aware that the issuer needs (or wants) to raise capital, which is likely still to be price-sensitive. An announcement by the company as to the failure to launch a capital raising is unlikely to help its position, particularly if it needs to repair its balance sheet.

Hedging restrictions

Since late 2008, issuers have sought to limit activity related to the underwriting process which may negatively affect their share price during the rights issue period and therefore affect the success of their rights issues. These moves followed the new Financial Services Authority (FSA) rules introduced in June 2008 which required disclosure of short positions of 0.25% or more in shares of companies undertaking rights issues. The FSA considered that the rights issue process provides significant scope for what might amount to market abuse, particularly in volatile market conditions. In such circumstances, non-disclosure of significant short positions may give the market a false and misleading impression of supply and demand in the securities concerned. The FSA, therefore, sought to prevent the potential for abuse by improving the transparency of significant short selling in such shares.

It has become an established part of UK market practice to include contractual restrictions on hedging in the underwriting agreement. These terms prevent underwriters from engaging in transactions which are intended to have the economic effect of hedging or mitigating economic risk associated with the underwriters' underwriting commitments. The restrictions typically apply from the date of the underwriting agreement to a date following the acceptance date on which the rump is placed or the date on which it is determined there is no need for a rump placing, subject to a cut off several days after the notification date.

It is important to note that these restrictions only apply to transactions which are “intended to have the effect of hedging”, and not any transactions which actually do have that effect. The restrictions therefore do not apply to all transactions that the underwriting institution may enter into involving the issuer's shares or related securities. For large institutions, it may be difficult or impossible to implement broader restrictions.

Typical exceptions to the contractual hedging restrictions include transactions carried out in the ordinary course of market making transactions, to execute client orders and other trades which are undertaken with a view to achieving a “substantially market neutral position”. In practical terms, underwriters may only hedge their underwriting commitment through the sub-underwriting process. The stated exceptions typically do not expressly include sub-underwriting, although the terms of the underwriting usually make it clear that sub-underwriting is permitted.

Market abuse questions can also arise. In order not to fall foul of section 188(5) of the FSMA and be found to have carried out a “manipulating transaction” or having created a false or misleading impression of the market, banks engaging in hedging in connection with a rights issue must demonstrate that they had “legitimate reasons” for the activity and were acting within accepted market practices. MAR1.6.7 of the FSA Code of Market Conduct states that among the “legitimate reasons” which a bank may cite for engaging in hedging is the requirement to trade at times beneficial to the market participant to make a profit.

Post-admission repetition of warranties

Since mid-2008, underwriters have sought protection in the context of seeking placees for the rump through the repetition of representations and warranties in the underwriting agreement at the relevant time. This was driven in part by the risk that underwriters could face potential liability for misrepresentation at the time of sale to the placees in the rump, particularly where there had been a material adverse effect. However, the underwriters would not be able to terminate the underwriting agreement for any breach of such repetition (as admission of the shares has already occurred), merely to claim damages for any losses. The initial market position was that no disclosure by the issuer was made against such repeated warranties.

Issuers subsequently sought to expressly limit the effect of these post-admission repetitions of the representations and warranties, notably where the relevant event causing the breach had been properly disclosed to the market. In such circumstances, the placees of the rump would purchase the shares with knowledge of the event causing the breach and would not have a claim for misrepresentation. Therefore, underwriters would be protected if the warranties are given subject to matters fairly disclosed to the market. This position has become accepted practice, as a means of balancing the risk to the company (particularly for events outside its control) and the underwriters (who are on risk for underwriting from admission of the nil paid rights). To reflect this balance, underwriters have sought in a number of issues to limit any disclosure qualifying the repeated warranties to those matters outside the control of the placees (such as material adverse change in the markets), but not to factual matters or matters reasonably within the control of the company (such as breach of laws or default).

Termination rights

Another development in underwriting practice in rights issues conducted during the financial crisis has been the increased attention focused on termination rights in the underwriting agreement. Material adverse change clauses have continued to develop to include ratings downgrades, publications of supplementary prospectuses and any non-routine engagement by a financial institution issuer with its regulator or central bank. These issues will be particularly sensitive on any rescue rights issue.

Standby underwriting agreements

Where a company is in urgent need of securing new capital, such as on a rescue rights issue, or where the issuer wants to secure funding based on positive pre-marketing feedback, but is not yet in a position to launch the rights issue itself (for example, because the accompanying prospectus has not yet been approved by the UK Listing Authority (UKLA)), the underwriters may consider entering into a standby underwriting agreement. In these circumstances, the underwriters agree to enter into an agreement to support the rights issue on a fully underwritten basis on terms to be agreed (including the discount), which allows the issuer to announce that it has secured the necessary funding. The standby agreement will be subject to various conditions precedent and termination rights for the underwriters (similar to those in a normal underwriting agreement).

Sub-underwriting

The way that rights issues are underwritten has changed radically in recent years. Historically, rights issues were underwritten by a single investment bank which would contact the company's existing institutional investor base on announcement of the issue and invite them to sub-underwrite the deal. The bank would expect to have a fully sub-underwritten deal by the end of that day.

Given the significant size of a number of recent rights issues, there have been a number of occasions on which syndicates of banks have been appointed as underwriters as they seek to limit their individual exposure. Additionally, syndicates have been formed as part of an overall financing package, where the lending banks are offered co-lead roles as a sweetener.

The universe of sub-underwriters has also expanded to encompass hedge funds and other investors who were previously outside the traditional institutional investor base. This has led to concern about the long-term interests of the company not being well served by short-term sub-underwriters who may be tempted to short sell the stock for a quick profit. We have also seen the government acting as ultimate underwriter on, among others, the RBS and Lloyds Banking Group rights issues.

Negotiating with more than one underwriter and agreeing the detail of how the sub-underwriting is to be carried out also means more complexity for issuers in the rights issue launch process. Generally, if the underwriting agreement includes hedging restrictions on the underwriters, the underwriting agreement will also usually require that the sub-underwriting agreements include them. Additional exceptions to the hedging restrictions in the sub-underwriting agreements can include:

- Short selling activity in the ordinary course of business (either by a fund managed by the relevant sub-underwriter or the relevant sub-underwriter's fund manager which has not entered into a sub-underwriting commitment).
- Short selling activity to hedge existing positions in convertible bonds or derivatives related to the shares.
- Selling (as part of ordinary course portfolio management undertaken independently from the entry into or the management of any risk arising from the sub-underwriting commitment) shares already held by the sub-underwriter at the date of the sub-underwriting commitment.

STRUCTURING

Combined placing and rights issues

A number of recent rights issues have been combined with a non pre-emptive placing to institutional shareholders and/or a cash box placing (*see below*). In a number of these combined placings and rights issues, the placees in the non pre-emptive offering were able to participate in the rights issue in relation to their placing shares in the same manner as qualifying shareholders under the rights issue. Additionally, certain of the placings/rights issues (for example, DSG International and Wolseley) also involved the placing shares and the rights issue shares being issued at different prices (with the discount for the institutional placing being lower than the discount to the theoretical ex-rights price (TERP) for the related rights issue). This would therefore allow investors in the placing (which often includes existing institutional shareholders who are prepared to increase their stake in the company) a second opportunity to participate on a discounted basis, further squeezing retail investors.

"Alternative" structures - cash box placings

A cash box placing is sometimes used both in conjunction with, or as an alternative to, a rights issue as a method of raising cash from the issue of equity securities, and is characterised for the purposes of the Companies Act 2006 (CA 2006) as a share for share exchange. It is also a useful means of creating distributable reserves, which may be of substantial assistance for companies seeking to repair their balance sheet and/or avoid breaches of banking covenants. The "non-cash" assets are typically shares in a special purpose subsidiary vehicle (SPV). An investment bank subscribes for the shares in cash funded out of the proceeds of a placing of new equity securities of the issuer. The new shares are issued in exchange for shares in the SPV. The statutory pre-emption restrictions do not apply, as the new shares are not issued for cash (for the purposes of the CA 2006).

There have been concerns over whether cash box placings only work in conjunction with an associated acquisition. They have been accepted in the market place in the past although, significantly, none of the recent cashbox placings have reached 10% of the issuer's share capital. In a letter to the London Investment Banking Association (LIBA), the ABI criticised the use of cash box structures which bypass shareholder pre-emption principles. Further, the ABI has expressed investor concern about the use of cash box structures in a letter sent to the chairmen of listed companies. This stresses the importance that investors attach both to statutory pre-emption rights and compliance with the pre-emption guidelines.

"Alternative" structures - compensatory open offer

Lloyds Banking Group undertook the UK's first compensatory open offer transaction in May 2009. This involved making an open offer to existing shareholders on a pre-emptive basis. Shareholders who did not take up their open offer entitlements received the premium achieved from the rump placing which occurred after the open offer closed. The structure is seen as more "shareholder friendly" than a straightforward open offer, because any holder who does not take up the offer (or who is excluded from the offer) still gets paid. This is contrasted with the position on a placing and open offer, where shareholders who do not accept the offer receive nothing and have their holding diluted.

Using this structure allows issuers to access funds on a shorter timetable than a traditional rights issue (assuming that shareholder approval is required for a rights issue). This is attractive to both the company and the underwriters who are “on risk” for a shorter period. The structure is only able to be used, however, if institutional shareholders are willing to participate despite not having a tradeable right. The FSA has expressed an intention to launch a consultative paper (*Further consultation on rights issues: accelerated issues, compensatory open offers, conditional rights issues and shelf registration vetting fees*) requesting feedback from the market on issues such as the possibility of removing the 10% restriction on the discount for this type of offer.

Although the Lloyds transaction was rather unusual (in that HM Treasury were the underwriters and they had committed in advance to underwrite at a price which, at launch, was significantly below market price), the compensatory open offer structure has been used in another transaction since then. A real estate company, Songbird Estates plc, raised GB£895 million (about US\$1.47 billion) in a placing and compensatory open offer of its Alternative Investment Market (AIM) traded shares in September 2009, at a discount of 96.9%. Those shares not taken up by shareholders were placed with Qatar Holding LLC, Fullbloom Investment Corporation LLC and Chichester Fund Limited.

Discounts

Unlike in a placing, there is no limit on the maximum discount to market price at which new shares issued in a rights issue can be offered (except that the permitted floor is their nominal value). Market practice on discounts has changed significantly as the financial crisis has developed. So called “deep discounts” (of 30% to 50%) were only historically seen in transactions involving companies experiencing financial difficulties, but there is no longer a perception that a large discount signifies a failing company. Setting an appropriate level of discount affords more flexibility in uncertain markets and increases liquidity in trading of the nil paid rights. It could also make it harder, in tandem with shortening the rights issue timetable, for short selling to occur and could, generally, reduce companies’ risk from shorting practices.

An analysis of discounts on rights issues in 2009 shows about one-third at a discount of less than 50% to the pre-announcement price (with very few having a discount of less than 40%), one-third with a pre-announcement discount of between 50% and 60% and one third having a discount of more than 60% to the pre-announcement price. Further, there is a general trend that the average discounts to TERP for rights issues undertaken with the primary purpose of acquisitions or opportunities were lower than the average discounts to TERP for “rescue” rights issues or rights issues to strengthen balance sheets.

DISCLOSURE AND TIMETABLE

The typical timetable for a UK rights issue may be eight to 12 weeks from kick-off meeting, but this will depend on whether a shareholders meeting is required and how long it takes to prepare any prospectus.

Against the backdrop of the global financial crisis, many of the companies which have chosen to do a rights issue have needed to access funds very quickly. The examples we saw in the sum-

mer of 2008, where the share prices of a number of companies fluctuated so significantly during the time the rights issue was open, threw the issue of length of timetable into stark relief and fuelled calls for reform.

Obviously, the longer the timetable, the greater the period in which the company’s share price may fluctuate or be abused, and the longer the company is exposed to the risk of speculation fuelling volatility. Another concern for issuers is that the longer the timetable, the greater the risk that the rights issue prospectus may become inaccurate. This can trigger the requirement for a supplementary prospectus which, in turn, affords withdrawal rights to investors. The underwriters also have an interest in keeping rights issue timetables to a minimum, so the time they are on risk between entering into the underwriting agreement and placing of the rump is as short as possible.

Desire to shorten the rights issue process for these reasons must, however, be weighed against the impact of shorter timetables on the retail investor community, who typically need time to consult advisers and respond to the offer and raise necessary funds.

There are three elements to the timetable. These are:

- The preparation time to launch.
- The period from launch to the shareholders’ meeting.
- The rights issue subscription period after shareholder approval has been obtained, affording investors a tradeable right.

Preparation of disclosure

The period of preparation of the offering before launch is the lengthiest part of the process. Although it is possible for an issuer to launch a rights issue on the basis of a standby underwriting arrangement or by issuing a circular to shareholders before the prospectus is completed, it is more typical to wait to launch until a prospectus is ready. There is currently no difference in the UK between the disclosure required for a full equity issue and a secondary issue (though this is under review, *see below*). This means that preparing the prospectus and carrying out the attendant due diligence work (often both to US standards if the issuer includes any US holders in the offering) takes time.

Reformers keen to reduce the rights issue timetable have argued that preparing a full equity offering prospectus should not be necessary on a rights issue. The cost/benefit analysis of weighing the time taken to prepare the full disclosure against whether it is used by investors may fall on the side of reducing the amount of disclosure required for three reasons:

- Rights issues are aimed at investors who have, by definition, already bought into the story of a particular issuer so may not need to be given such detailed disclosure as investors in a credit which is new to the market.
- The prospectus is sometimes not posted to retail investors in any event (they may instead receive a short A5 size leaflet explaining what a rights issue is and what they need to do, and identifying the website from which they can obtain the full prospectus).

- Institutional investors often say that they do not have the opportunity to receive or read the full prospectus before they enter into the sub-underwriting, so its usefulness is perhaps reduced.

The level of disclosure required for rights issues was one of the main issues considered by the Chancellor's Rights Issues Review Group, in the context of proposing ways in which the rights issue process could be expedited to reduce the time a company and its underwriters are on risk. The suggestion was also taken up by the European Commission (Commission) in its review of Directive 2003/71/EC on the prospectus to be published when securities are offered to the public or admitted to trading (Prospectus Directive). The original proposal was for the Prospectus Directive to be amended so as only to require a "proportionate" or reduced disclosure regime for rights issues. In the latest draft of the proposals, however, the European Parliament appears to have deleted this proposal, and instead seeks to exempt issuers with securities admitted to trading on a regulated market conducting a rights issue from the obligation to prepare a prospectus at all.

During the consultation period relating to the changes, some banks indicated that, until they feel that the quality of ongoing financial reporting by UK listed companies after admission is improved, it is useful to continue to have a full prospectus for rights issues. Drafting a full prospectus is also viewed by some banks as a useful tool to focus the company's mind on going through a thorough due diligence process, and it can be an important way of managing risk within the bank. Query, therefore, whether there will be further negotiation on this point as the proposals continue to make their way through the European legislative process, and whether even if rights issues are exempt, the market will try to require issuers to prepare a prospectus in any event.

Recent timetable reforms

Other issues which impact on timing of the rights issue process are whether a company needs to hold a general meeting to allot shares, and whether statutory pre-emption rights under the CA 2006 need to be disapplied. 2009 saw both the FSA and the Government respond to calls for the notice periods for keeping a rights issue offer open and for holding a general meeting to be reduced. UKLA Listing Rule (LR) 9.5.6R now states that an offer must remain open for acceptance for ten business days (down from 21). The Companies Act (Share Capital and Acquisition by Company of its Own Shares) Regulations 2009 have also reduced the section 562 of the CA 2006 notice requirement from 21 days to 14 days.

One further possibility for timetable reform could be to try to get the offer period and general meeting notice period to run concurrently (with conditional trading only, pending the outcome of the general meeting). However, unsophisticated shareholders or those without access to instant information could be left with something worthless if the requisite shareholder resolutions were not passed, so this may not be a proposal which is taken further.

We may also see an increase in the use of the "Gazette route" rights issue. This structure is used where statutory pre-emption rights have not been disapplied and the issuer has overseas shareholders. Section 562(3) of the CA 2006 requires that no-

tice of the share offer, or the offer itself, must be published in the London Gazette, leading to the name Gazette route rights issue. Where the pre-emption provisions are disapplied, certain overseas shareholders are generally excluded from the offer. More widespread use of the Gazette route may be helpful in circumstances where it not only avoids a resolution to disapply the pre-emption rights, but also saves the issuer from having to hold a general meeting (for example, if the issuer has sufficient authorised share capital and outstanding section 549 of the CA 2006 authorities).

Potential future timetable reforms - RAPIDS

Another proposal relating to reform of rights issue timetables is the suggestion that the UK should move towards a system akin to the Australian RAPIDS model (Renounceable Accelerated Pro-rata Issue with Dual-bookbuild Structure). The idea is that the rights issue process is split into two parts, the institutional offer and the retail offer. The length of offer timetable is often set because regulators and legislators feel the need to protect the retail shareholders, and ensure that they have enough time to receive all relevant information and consider an offer. Institutional investors can move far faster than retail investors so perhaps do not need this level of protection. Under the RAPIDS model (which we understand Singapore may also be considering), the institutional element of the offer is accelerated to a four day bookbuild period and the institutions typically take up 60% to 80% of the funds. The company is therefore only on risk for four days, during which time trading is suspended avoiding the risk of short-selling. A separate retail process open for a further 21 days is then launched, with the retail rump able to be placed in the market at a higher price than the institutional, affording protection to the retail element.

There has been debate about how registrars would identify which holders are retail and which institutional, and also whether the structure would breach the UK Listing Principle to treat shareholders equally. The Australian regulator has got comfortable with this latter element, by arguing that all shareholders are treated fairly if not identically so it is possible that this could be accommodated in the UK.

REGULATORY ISSUES

The volatile markets in which the rights issues over the past two years have taken place have raised several regulatory market practice issues.

Announcements

Issuers conducting rights issues have a basic obligation under LR9.5.5R to ensure that the results of the issue and results of any rump placing (including the date and price per share) are disclosed to the market as soon as possible. In general, one announcement tends to be made at the end of the rump period. However, questions can arise as to whether it is necessary to issue a separate "take up" announcement, where take up of the offer is low or otherwise out of line with what the market might expect. Recent guidance from the FSA that issuers should not wait to disclose "bad" news pending expected "good" news would tend to suggest that a separate announcement is needed. Questions also arise as to whether specific disclosure should be

made of the rump take up by underwriters and sub-underwriters, and whether a separate announcement relating to the stick is required. However, there is no strict LR requirement and again, if the stick is out of line with what the market might have expected, the information could constitute "inside information" and require separate disclosure.

Whether separate announcements about the level or nature of sub-underwriting commitments should be made has also been debated. Factors relevant to the decision to announce include whether the:

- Level of sub-underwriting is in line with market practice.
- Market would expect to receive such separate disclosure of sub-underwriting at that level.
- Market would perceive a discernable difference between shares taken up by underwriters as opposed to sub-underwriters.

Working capital statements

The FSA has focused its attention on ensuring that the working capital statement is not qualified by any other disclosure within the rights issue prospectus, particularly in relation to any rescue or refinancing rights issue (see also LR9.5.12R). In particular, the UKLA has taken a very active approach in reviewing risk factors, to ensure that potential discussions on requiring additional financing in the longer term do not cut across the requirement for a "clean" working capital statement in LR6.1.16R. Issuers and their sponsors have entered into considerable discussions with the UKLA on the risk factors and capitalisation and indebtedness statements as part of the overall review process by the UKLA, which can potentially delay the publication of the prospectus.

Property valuation reports

A number of real estate companies have launched rights issues to improve their capital position against a backdrop of unusually difficult commercial property market conditions, with property values falling very rapidly. The FSA has provided updated guidance as to how up-to-date a property valuation report in a property company's share prospectus is required to be. In recent market conditions, mainstream commercial property values were believed to be dropping so rapidly that almost any valuation report would be out-of-date before it was completed. In such circumstances, it was argued, no issuer could ever give a "no material change" statement from the date of the report to the date of the prospectus.

The UKLA has stated that in rapidly falling markets, and where a "no material change" statement could not be given, property companies

can revalue their portfolio to the latest practicable date before the date of the prospectus, which should not be more than six weeks from the date of the prospectus. Additionally, issuers who cannot declare there has been "no material change" from the date of the report can instead confirm in the prospectus that the effective date of the valuation is the latest date it can practicably be ahead of publication. In such circumstances, the prospectus must be clear describing the market conditions the issuer is experiencing.

THE FUTURE

It is expected that further rights issues will be launched in 2010, particularly if the debt capital markets remain tight and lending banks continue to limit their advances. There will continue to be a mixture of opportunistic/acquisition driven placings, as M&A activity is expected to pick up, while other companies may find themselves needing additional funding for less uplifting reasons. It remains to be seen whether institutional investors will continue to support those companies who have not sought to strengthen their balance sheets to date or need to raise even more capital from shareholders.

Future issues which the market will monitor closely are whether we will see a rise in "tail swallowing". This arises where an investor sells enough of its tradeable rights to acquire the balance. Traditionally, we have seen tail swallowing in the case of director-investors. Institutional investors may start to take this route where they are not prepared to fully support the deal. Whether certain types of sub-underwriters will be able to set-off their subscription costs against underwriting fees if they take up rights is also open for debate.

Market participants will await the further FSA consultation paper, discuss whether the UK may move to a RAPIDS-like settlement system and consider the outcome of the EU Prospectus Directive review with interest. These have certainly been, and will continue to be, interesting times.

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