

# COVID-19 Corporate Update: Capital Raising by UK Public Companies

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UK Corporate

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On 8 April, the UK Financial Conduct Authority (FCA) announced further measures to assist companies seeking to raise finance from the capital markets in order to meet the challenges of the COVID-19 pandemic and position their businesses for recovery. The [FCA Statement of Policy](#) sets out guidance on the application and relaxation of certain pre-existing rules, differentiating in approach according to the size of share issue.

The Statement of Policy had immediate effect on publication and will apply throughout the COVID-19 crisis. Given the urgency of the current circumstances, the FCA chose not to consult on these changes in policy and applicable requirements but invites views from stakeholders and observes that it will be monitoring market events and the effects of the announced measures. The FCA's overriding aim of ensuring appropriate protection for investors is noted.

## **Smaller Share Issues without Prospectus**

Referring to the recent guidance issued by the [Pre-Emption Group \(PEG\)](#) to encourage investors to support new issues of shares representing up to 20% of share capital for any purpose (described in our earlier [alert](#)), the FCA notes that companies pursuing such a share issue may also be able to make use of the option, under the Prospectus Regulation, to issue up to 20% of share capital without a prospectus.

The FCA further remarks that the detail of the PEG policy should be considered carefully by issuers, in particular the suggestion that shares are issued on a "soft pre-emptive basis" where possible. To this end, the FCA highlights the role issuers can play in delivering "soft pre-emption" by exercising rights available to them in respect of bookrunners' allocation policies and thereby requesting that shares are allocated, in so far as possible, to existing institutional, and other, shareholders.

It is also confirmed by the FCA that the existing rules and practices on market soundings should be applied in relation to these smaller share issues.

We note, in relation to this topic, that the PEG Statement has received support among investor bodies, including the [Association for Financial Markets in Europe](#) and the [Investment Association](#).

## Prospectuses—Simplified Disclosure Regime

For companies that are required to produce a prospectus upon issuing new shares, the FCA reminds that a simplified disclosure regime was introduced when the Prospectus Regime came into force in July 2019. Under this revised regime, a company that has been admitted to trading on an applicable market for at least 18 months may issue a prospectus for a secondary issue without needing to include an operating and financial review or disclosures on organisational structure, capital resources, remuneration and benefits or board practices. These matters are considered to be already disclosed on the basis of a prior prospectus and/or annual reporting and other on-going disclosure requirements.

The simplified disclosure regime will not be available where there is a non-EU component to the secondary issue.

## Working Capital Statements

The FCA recognises that many companies will have difficulty in preparing a clean working capital statement in the usual form during the COVID-19 outbreak. A working capital statement would normally provide comfort to investors, based on substantial financial due diligence, that an issuer and its group have sufficient working capital for their present requirements, meaning at least a 12 month period from the date of the statement. There are obvious difficulties in modelling the possible impact of public policy and other measures, as well as demand-side factors, on a business in the current environment that make working capital assessment and preparation of a model for a reasonable worst-case scenario particularly challenging.

In order to avoid circumstances where a large number of working capital statements are therefore qualified and it becomes difficult for investors to distinguish between the reasons for such qualifications, the FCA has set out a change of approach to working capital statements.

In a departure from applicable ESMA Recommendations<sup>1</sup>, the FCA considers it appropriate at present for companies to take the following approach to working capital statements:

- key modelling assumptions may be disclosed in an otherwise clean working capital statement;
- assumptions may only be related to COVID-19 and must be clear, concise and comprehensible; and
- there must be a statement that the working capital statement has otherwise been prepared in accordance with ESMA Recommendations and this new FCA guidance.

A [technical supplement](#) is published to provide further details and assist companies in preparing working capital statements that may be required in prospectuses or other shareholder circulars.

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<sup>1</sup> ESMA/2013/319: The ESMA Recommendations contain guidance for the consistent implementation of Commission Regulation (EC) No 809/2004 implementing the Prospectus Directive published 20 March 2013, which have been carried over to the Prospectus Regulation regime pending ESMA's finalisation of new revised ESMA Guidelines on prospectuses.

## General Meeting Requirements under the Listing Rules

The FCA recognises that the holding of general meetings may be problematic for companies and that notice periods may put at risk timelines necessary to complete fundraisings. As such, the FCA will allow premium listed companies to apply for dispensation from the requirement to hold a general meeting in connection with a class 1 transaction and/or a related party transaction.

Applications for dispensation will be assessed by the FCA on a case-by-case basis and must be accompanied by written undertakings to vote in favour of the relevant transaction from shareholders sufficient in number to pass the required resolution at the general meeting. The market must also be informed in an appropriate manner.

A [technical supplement](#) on this new policy is also published.

## Market Abuse Regulation

The FCA also took the opportunity to remind issuers that the Market Abuse Regulation (MAR) remains in full force and effect, including the requirements to maintain insider lists in connection with capital raising and other transactions and to protect and share inside information in accordance with MAR. The FCA notes that companies must assess carefully and on an on-going basis what information constitutes inside information and that this may include novel considerations, including as to materiality of particular factors, during the COVID-19 pandemic. The FCA confirms that it continues to monitor, investigate and enforce against abusive behaviours.

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