

## Insights

# UK COVID-19: FCA MEASURES TO ASSIST LISTED COMPANIES

Apr 08, 2020

As we have mentioned in previous articles on cash box placings and the Pre-emption Group Statement of Principles, companies may be looking at structures to raise capital quickly in these unprecedented times due to COVID-19.

To assist companies with this, the FCA has today announced a series of measures. The new measures apply from today and will apply until the FCA advise otherwise.

**Smaller share issues (without a prospectus)** – this refers to the relaxation of the Pre-emption Group Principles to support non-pre-emptive issuances by companies of up to 20% of their issued share capital (ISC), rather than the 5% for general corporate purposes with an additional 5% for specified acquisitions/investments. See our earlier articles on [cash box placings](#) and the relaxation of the Pre-emption Group Statement of Principles.

**Share issues with a prospectus** – for companies that have been admitted to trading on a regulated market for at least 18 months and wish to raise more than 20% of ISC, perhaps by way of a rights issue or a placing and open offer, they may wish to consider a secondary issuances using the simplified prospectus regime. Companies will benefit from reduced disclosure requirements in the prospectus. For example, there is no requirement to include information on OFR and capital resources, remuneration & benefits, board practices and employees and historical financial information is only required for the last 12 months. The regime is also available to companies on AIM for offers to the public.

**Working capital statements** – companies producing a prospectus must include a statement that the issuer has sufficient working capital for its present requirements ie. for at least the next 12 months from the date of the prospectus (a 'clean' statement) or explain how additional working capital will be provided. These statements cannot be qualified by caveats, qualifications, assumptions, sensitivities or cross-references to risk factors and when giving the statement, issuers are expected to have undertaken a number of procedures to support the statement including an assessment of whether there is sufficient margin or headroom to cover reasonable worst case scenario (ESMA Recommendations).

In these difficult times, many companies are unable to model a reasonable worst-case scenario resulting in qualified working capital statements. To assist with these issues, the FCA is implementing a different approach during this crisis for prospectuses and circulars published under the Listing Rules (by premium listed issuers) and which require a working capital statement.

Under this approach:

- Key modelling assumptions underpinning the reasonable worst-case scenario will be permitted to be disclosed in an otherwise clean working capital statement.
- These assumptions may only be coronavirus-related. They must be clear, concise and comprehensible. Non-coronavirus assumptions may not be included.
- There must be a statement that the working capital statement has otherwise been prepared in accordance with the ESMA Recommendations, and the technical supplement to the FCA Statement of Policy on the coronavirus crisis.

Further details are set out in the [Technical Supplement](#).

The above does not apply to working capital statements in AIM documents, pending any guidance from the London Stock Exchange.

**Listing Rules and general meetings** – to alleviate the time constraints imposed by notice periods, premium listed issuers undertaking:

- class 1 transactions (LR 10.5.1R(2)); and/or
- related party transactions (LR 11.1.7R)

can apply for a dispensation from the requirement to hold a general meeting.

The FCA will look at this on a case by case basis and issuers will need to have obtained, or will need to obtain, written undertakings from shareholders (who are eligible to vote under the Listing Rules) that they approve the proposed transaction and would vote in favour of a resolution to approve the transaction if a general meeting were to be held. When the requisite number of written undertakings is obtained, the issuer should inform the market, either via the relevant FCA-approved explanatory shareholder circular or an RNS.

Issuers may either:

- obtain sufficient written undertakings from eligible shareholders prior to publishing a circular and announcing the transaction; or
- publish a circular that states they are yet to obtain such a written undertaking from a sufficient number of shareholders, and will be applying for dispensation. When they have sufficient

written undertakings they will be required to release an additional announcement confirming the number has been reached.

Further details are set out in the [Technical Supplement](#).

**Market abuse** – critically, however, the FCA has made it clear on numerous occasions since the outset of the pandemic, that issuers (Main Market and AIM) must continue to comply in full with their obligations under the EU Market Abuse Regulation in relation to the timely public disclosure of inside information concerning the issuer and/or its listed financial instruments. See our [earlier article](#) on this.

### **Further BCLP UK COVID-19 related Capital Markets Know-How**

Inside Information: [COVID-19 MAR: Inside Information Disclosure](#)

Raising equity capital: [Is it time to consider cash box placings again to raise cash quickly?](#) and [Pre-emption Group Statement - Further relaxations for raising capital](#)

Corporate reporting/dividend timetable: [COVID-19 - temporary changes to publication of accounts, publication of FRC guidance on corporate reporting and temporary changes to dividend procedure timetable](#)

### **RELATED PRACTICE AREAS**

- Corporate
- COVID-19 / Coronavirus Resources
- M&A & Corporate Finance
- Securities & Corporate Governance

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