TaylorWessing

Secondary Issues

Contents

Our Corporate Finance Group

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Expertise of the Corporate Finance Group

Within the UK, the Corporate Finance Group acts on the full range of corporate finance and public M&A transactions, including secondary issues both large and small. This includes secondary issues by companies on:

- the Official List maintained by the Financial Conduct Authority ("FCA") with admission to trading on the Premium or Standard Segment of the Main Market of the London Stock Exchange
- the High Growth Segment of the London Stock Exchange's Main Market, for medium and large sized high growth companies
- the Specialist Funds Segment of the London Stock Exchange's Main Market, designed for highly specialised investment entities, and
- the AIM market for smaller, growing companies operated by the London Stock Exchange ("AIM").

In addition to structural and transactional advice, securities lawyers at Taylor Wessing advise on compliance issues in the context of secondary issues. This includes advising upon the timing for, and issue of, research notes, conducting meetings with research and other analysts, the format of marketing presentations and briefings and the timing and content of regulatory announcements.

Introduction

The purpose of this briefing is to provide a background to the key points relevant to secondary issues by companies that are listed or quoted in the UK. The expression "secondary issue" refers to the process by which an existing listed or quoted company, often referred to as the "issuer", raises new capital through the issue of new shares.

The main types of secondary issue

The most common types of secondary issue in the UK are rights issues, open offers and placings.

Rights issues and open offers are pre-emptive public offers, meaning that existing shareholders are given the right to participate in the offer pro rata to their existing shareholdings. Existing shareholders, therefore, have the opportunity to benefit from any discount to market price at which the new shares are offered and to avoid a dilution of their shareholdings.

In contrast, placings are issues of new shares to selected subscribers only, and existing shareholders are not given the right to participate (although major shareholders may often be included among the placees). For this reason, greater restrictions are placed on the amount of new shares that may be issued under a placing and the discount at which they may be acquired. Placings are usually structured so that a prospectus is not required, and the process may take place in a matter of days. They are, therefore, generally quicker and more straightforward to execute than public offers.

Issues may sometimes combine a pre-emptive and non pre-emptive element, for example, a placing and open offer involves both a placing of new securities with selected subscribers, and a public offer to existing shareholders. The placed shares will either be placed "firm" or "subject to clawback". Shares placed subject to clawback will be available to existing shareholders who may subscribe for them on a pro rata basis, so that the placees' entitlements are scaled back accordingly.

In contrast, shares that are placed firm will not be available to existing shareholders.

Variations on a theme

A vendor placing is a form of placing used in connection with an acquisition, whereby the issuer allots new shares to the seller in exchange for shares in the target company or other assets. The consideration shares are placed on behalf of the seller so that they receive cash.

An accelerated bookbuild placing is a variation on a standard placing arrangement, which has become a common basis upon which to carry out larger placings. Following the release of a detailed placing announcement, investors are invited to submit bids on the basis of the terms and conditions of the placing set out in the announcement. The following day bidders are notified of the shares allocated to them, with admission of the new shares to trading and settlement taking place shortly thereafter.

Rights issues, open offers and placings may be coupled with a cash-box mechanism, whose purpose, in the context of a placing, is to increase the number of shares that may be issued on a non pre-emptive basis. In the context of a rights issue or open offer, a cash-box structure may be used to create distributable reserves in the issuer. (See page 20 for more details.)

Reasons for a secondary issue

Secondary issues are usually conducted by companies to raise cash for specific or general purposes including:

- to repay debt
- to satisfy capital adequacy requirements, if regulated by the Prudential Regulation Authority or the Financial Conduct Authority
- to fund acquisitions, or
- to create working capital.

Alternatively, a company may issue new shares in lieu of a dividend (or otherwise) to existing holders of shares in proportion to their holdings, the further shares credited as fully paid up out of reserves. Such issues are referred to as bonus issues and are used where a company's share price has become high, so as to reduce the price per share to a more affordable level whilst not affecting the company's market capitalisation.

Prospectus requirements

If the proposed secondary issue involves either:

1. an offer of transferable securities to the public, or
2. an admission of securities to trading on a regulated market (which includes the Main Market of the London Stock Exchange but not AIM),

and no relevant exemption applies, then a prospectus, which complies with the requirements of the Prospectus Regulation (EU) 2017/1129 as it applies in England and Wales from time to time after 31 December 2020 and its supporting legislation, must be approved by the Financial Conduct Authority ("FCA"), published on a website and filed with the National Storage Mechanism.

The requirement for FCA approval of prospectuses applies to all companies, whether listed on the Official List, quoted on AIM or otherwise. Typically, preparation of a prospectus will take between four to six weeks and will, therefore, have a significant impact on the timetable and transaction costs.

Rights issues and open offers will generally require the production of a prospectus in contrast to a placing which will normally be structured so as to fall within one of the associated exemptions.

There is a reduced disclosure regime under the Prospectus Regulation, which provides for simplified, less onerous specific disclosure requirements for certain types of secondary issues. This regime is not limited to pre-emptive offers.

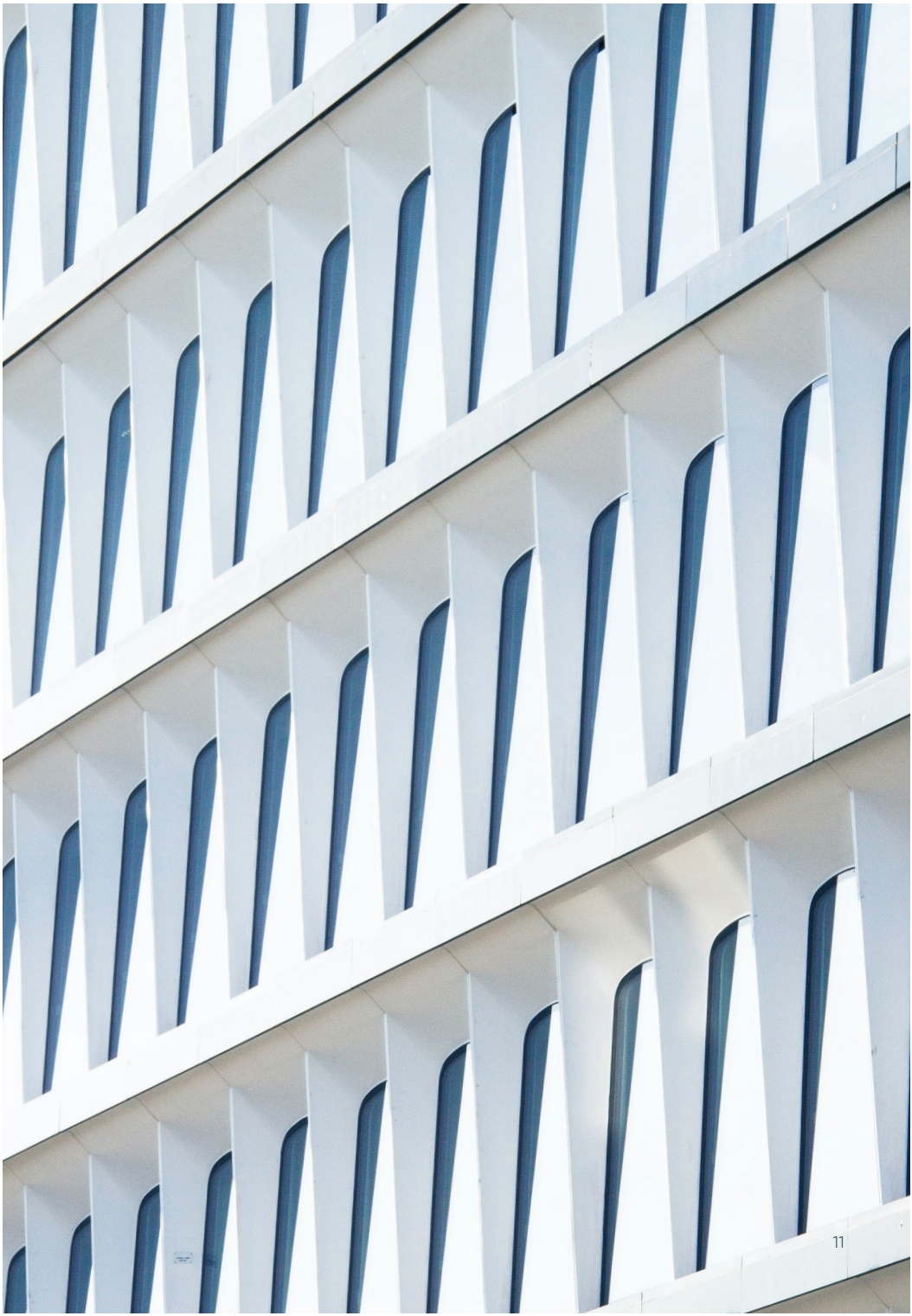
The rationale for the simplified disclosure is that issuers with securities admitted to trading on a regulated market are already required to provide ongoing disclosures, and thus it is considered there is less need for them to publish a full prospectus for subsequent offers or admissions to trading. It is available for all types of secondary issues by:

- issuers with securities that have been admitted to trading on a regulated market or an 'SME growth market' (which includes AIM) continuously for at least the last 18 months and who issue securities that are fungible with existing securities previously issued
- issuers whose equity securities have been admitted to trading on a regulated market or an SME growth market continuously for at least the last 18 months and who issue non-equity securities, or
- offerors of securities admitted to trading on a regulated market or SME growth market continuously for at least the last 18 months.

An alternative option is the UK 'growth prospectus', which also offers reduced disclosure requirements. It is potentially available for AIM companies (dependent on their size) but not companies on the Main Market. It may be used for public offers (but not where a prospectus is required for admission to trading on a regulated market) by any of the following, provided they do not already have securities admitted to trading on a regulated market:

1. small and medium enterprises ("SMEs"), being companies which, based on their last annual or consolidated accounts, meet at least two of the following criteria:
    - an average number of employees during the financial year of less than 250;
    - a total balance sheet not exceeding €43 million; and
    - annual net turnover not exceeding €50 million; or
2. issuers, other than SMEs, whose securities are traded or are to be traded on an SME growth market, provided they had an average market capitalisation of less than €500 million (based on year-end quotes) for the previous three calendar years.

However, the disclosure requirements are still substantial. Further details of the prospectus regime are set out on pages 32 to 37.



Key issues

There are various issues which will play a part in determining what type of share issue will be the most appropriate in a given situation.

These include:

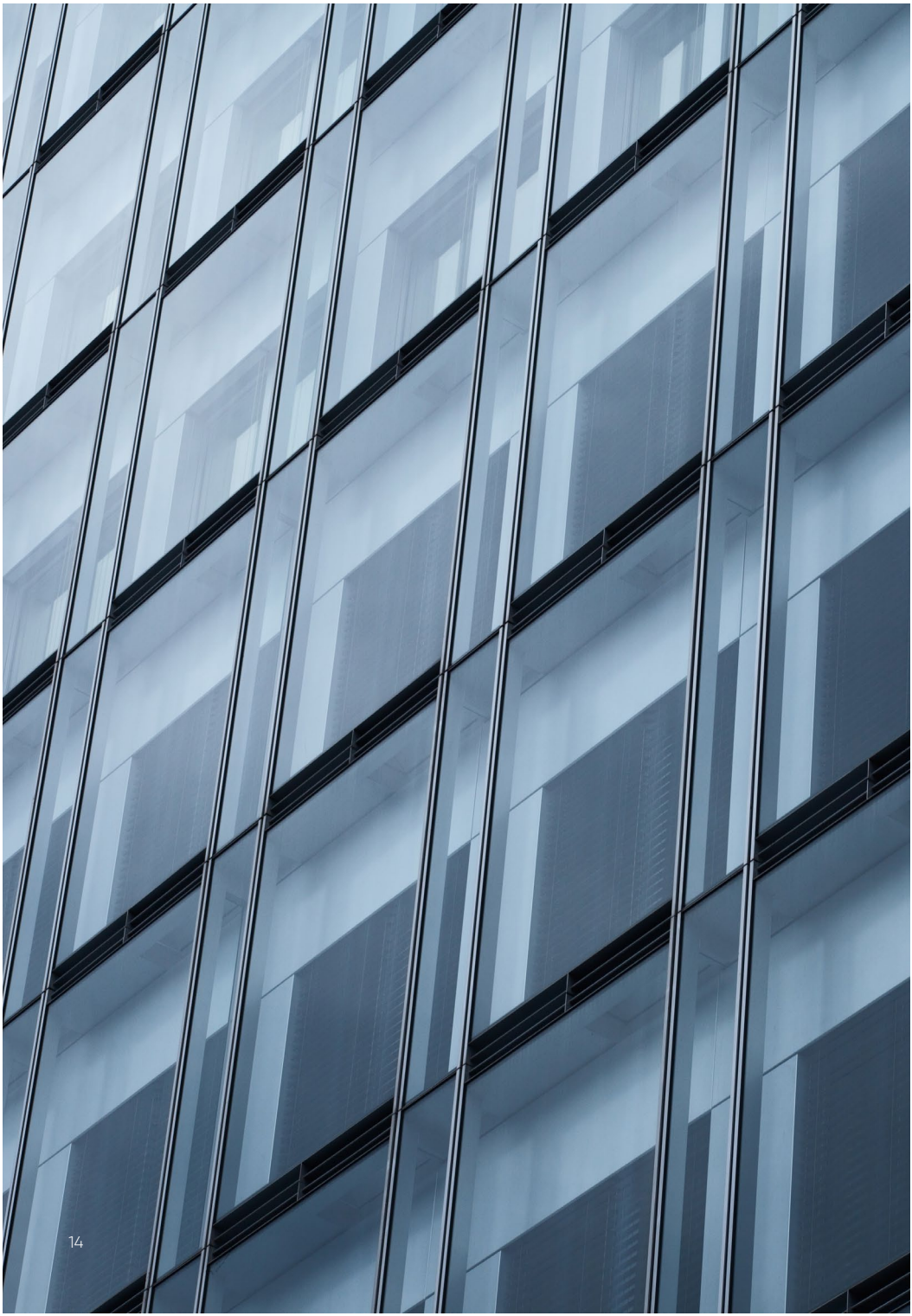
- the urgency of raising the money (and whether a particular structure will take too long)
- the size of the proposed issue relative to the existing share capital
- whether or not a shareholder meeting is required (for example, if the company does not have sufficient authority to allot shares)
- whether or not there is a sufficient pre-emption disapplication (and, if not, whether it would be preferable to obtain this from shareholders)
- the purpose of the share issue (for example, whether it is to strengthen the balance sheet or is related to an acquisition)
- the proposed discount to the share price, and
- whether there are lots of overseas shareholders in jurisdictions with onerous regulatory requirements.

In short, the key issues often revolve around whether or not a prospectus and/or shareholder meeting will be required (which can both lengthen the timetable, although the notice period for a shareholder meeting can run concurrently with an open offer period) and how the proposed size of the issue and discount match up against the various regulatory and institutional shareholder limits on size and discount. See table on right.

These issues are considered further in the comparative table found on pages 22 and 23 and in more depth over the following pages up to page 20 in relation to the different types of secondary issue.

	Advantages	Disadvantages
Placing	■ Speed ■ Cost	■ 5% general annual size limit plus 5% acquisition or specified capital investment annual size limit (IA guidelines)[1] ■ 20% size limit to avoid prospectus (regulated market)
Cash box placing	■ Speed ■ Cost ■ Merger relief	■ 5% general annual size limit plus 5% acquisition or specified capital investment annual size limit (IA guidelines) ■ More complexity than on a straight placing ■ 20% size limit to avoid prospectus (regulated market)
Placing and open offer	■ Quicker than rights issue (if shareholder meeting required) as offer period can run concurrently with meeting notice period ■ Often lower transaction costs than rights issue	■ Maximum 7.5% discount on open offer (investor preference for rights issue if discount is greater) ■ Regulatory 10% discount limit, or shareholder approval required (premium listing) ■ Size limit of 15-18% (investor preference for rights issue otherwise) ■ "Lazy" shareholders receive nothing – unless open offer with compensation structure.
Right issues	■ Favoured by institutions as offer made on pre-emptive basis ■ No regulatory limits on discount or size of issue ■ "Lazy" shareholders have rights sold in market	■ Timing, if shareholder meeting required as notice period and offer period cannot run concurrently ■ Cost ■ Less flexibility

1 References in this table to the IA guidelines are to the Share Capital Management guidelines published by the Investment Association from time to time.



Rights issues

Rights issues involve the offer of shares, usually at a discount to their market price, to existing shareholders pro rata to their shareholdings. The new shares are offered to shareholders using provisional allotment letters (PALs) or through CREST.

The rights to subscribe for shares may be traded nil paid in the market while the rights issue is open for acceptance. This gives shareholders the ability to sell their rights, and monetise the discount, without having to take up the new shares themselves.

In addition, shares equal to the entitlements of 'lazy' shareholders who do not respond to the offer may be placed by the underwriters at the end of the offer period, and any premium over the offer price and placing expenses that is realised is paid to those shareholders. Because rights issues are fully pre-emptive and compensate shareholders that do not participate in the offer, there is no limit on the discount at which new shares may be offered (subject to directors' fiduciary duties).

Any shares not taken up by shareholders or sold in the market are left with the underwriter and/or subunderwriters (known as the 'stick').

A rights issue will usually require a prospectus, whether the company is listed on the Main Market of the London Stock Exchange or AIM (unless an exemption applies). There are, however, reduced disclosure requirements for prospectuses for secondary issues, designed to lower the cost and administrative burden for issuers (on the basis that many of the disclosures required are already available to the market under ongoing reporting obligations).

The drawback of rights issues used to be the time they took to complete and the risk to the orderliness of the process that may result from, for example, short selling, but these issues have been reduced with improvements to the speed of the process for a rights issue.

The structure and timetable of a rights issue will depend primarily on:

- whether a shareholders' general meeting is necessary to authorise directors to allot the new shares, and
- whether statutory pre-emption rights have been, or are to be, disapplied (it can still be beneficial to disapply the statutory regime, even though the offer is fully pre-emptive).

Shareholder meetings

If a shareholder meeting is required, this will extend the rights issue timetable, as the shareholder authorities must be obtained before the rights issue can be made to shareholders. Therefore, the timetable will be based around the notice period for the meeting followed by the rights issue subscription period (as well as the preparation and approval process for any prospectus that may be required).

Public companies (other than "traded companies") are required by statute to give at least 14 clear days' notice of a general meeting and 21 clear days of an AGM (unless their articles require longer). This timing delay may be increased for traded companies (which includes Main Market but not AIM companies) who are required to give at least 21 clear days' notice of all shareholder meetings, although they can take advantage of the 14 clear day notice period for general meetings other than AGMs (subject to their articles), provided that they:

(a) have first obtained shareholder authority (in the form of a special resolution) at the last AGM or subsequent meeting to do so (which must be renewed annually), and

(b) allow shareholders to vote by electronic means accessible to all shareholders.

Main Market companies should, however, note the preference of the institutional investor groups that Main Market companies only use the shorter 14 day notice period in limited and time-sensitive circumstances where it would clearly be to the advantage of shareholders as a whole to do so.

Pre-emption rights

Even if the annual disapplication of pre-emption rights is sufficient for the purposes of the rights issue, the issuer may still want to consider seeking a disapplication. This will largely depend on whether or not a shareholder meeting is required anyway, but other factors may be relevant.

If statutory pre-emption rights are disapplied, the issuer will have the flexibility of not offering the rights to certain overseas shareholders (in jurisdictions with onerous regulatory requirements) but instead determining that the rights otherwise attributable to those shareholders should be sold nil paid as soon as possible after dealings commence.

In contrast, where statutory preemption rights are not disapplied, the offer must be extended to all overseas shareholders. In these circumstances, the offer to shareholders without either a registered address in the UK or address for the service of notices in the UK is made by the issuer arranging for a notice to be published in the London Gazette.

Where statutory pre-emption rights have been disapplied, the minimum rights issue subscription period will be 10 business days. The minimum subscription period under the statutory pre-emption route is 14 clear days.

Open offers

An open offer is also an offer of new shares to existing shareholders on a pre-emptive basis pro rata to their existing holdings, usually at a discount to the current market price of the existing shares. As with a rights issue, a prospectus will normally be required for an open offer.

The right to apply for open offer shares is given to shareholders who hold their shares in certificated form by way of an application form and to shareholders who hold their shares in CREST by way of a credit of open offer entitlements to their stock accounts in CREST.

Open offers differ from rights issues in the following key respects:

- First, in an open offer there is no period of trading in rights in the shares being offered, and as such shareholders must either participate in the offer or lose the benefit of any discount at which the new shares are offered. For this reason, the new shares can only be offered at a maximum discount of 10% if the issuer has a premium listing on the Official List. The 10% restriction does not apply to UK companies traded on AIM, however, or companies with a standard listing on the Official List. The then ABI (now part of the Investment Association) has indicated that rights issues are preferred to open offers if the increase of share capital is more than 15% to 18% or the discount is greater than 7.5%.

- Second, the timetable for an open offer can be shorter than for a rights issue. An open offer period is required to be open for 10 business days (where statutory pre-emption rights have been disapplied), but this can run concurrently with any required general meeting notice period.
- An open offer will often be combined with one or more placings to institutional investors. The shares are often placed conditionally "subject to clawback" by existing shareholders, such that the institutions' entitlement is scaled back if shareholders subscribe for any of the placed shares. Alternatively, if there is a sufficient disapplication of preemption rights in place, shares may be placed "firm" with institutions, such that the firm placees commit unconditionally to acquire the shares, and those shares cannot be clawed back to the open offer.

It can also be possible to structure a compensatory open offer, whereby shareholders who do not take up their entitlement will be compensated as on a rights issue. Under this structure they receive any value above the subscription price achieved by the underwriters in selling those shares not taken up (on a traditional open offer, shareholders who do not take up their entitlements receive nothing).

Placings

A placing is the quickest and most inexpensive means of raising capital, and has traditionally been the preferred capital raising method for companies traded on AIM, primarily because they are typically structured so that a prospectus is not required. However, companies will need sufficient authority from shareholders to be able to issue shares for cash on a non pre-emptive basis.

The Pre-Emption Group's Statement of Principles recommend that companies annually disapply preemption rights for no more than 5% of issued share capital generally and (by a separate resolution) for no more than an additional 5% of issued share capital in connection with an acquisition or specified investment, and may not issue more than 7.5% on a rolling three year basis in respect of the 5% general limit.

Any proposed placing in excess of the available disapplication will require a separate general meeting to be held, which will extend the timetable. This would entail sending a circular to shareholders to convene a general meeting. The notice period for such a meeting will be 14 or 21 clear days, depending on the company's articles of association (and whether the 21 day notice period for Main Market and other "traded" companies applied).

The then ABI (now part of the Investment Association) has indicated its preference for the discount at which the new shares can be placed to be restricted to 5% of the prevailing market price.

Currently, it is common for larger institutional placings to be carried out on an accelerated bookbuild basis, in which the demand and price is tested. Previously, these types of placings were often combined with a 'cash-box' mechanism since these structures were considered to fall outside the pre-emption requirement to increase the size of the issue above 5% (or any higher threshold of disapplication of pre-emption rights in place), but were still often restricted in practice by the threshold for a share issue which would trigger a prospectus requirement for an issuer listed on a regulated market (previously 10%, now 20%). However, the Pre-Emption Group Statement of Principles now not only includes a 5% threshold in respect of an acquisition or specified capital investment, in addition to the existing 5% general threshold, but also clarifies that cash box placings should be considered to fall within the scope of the limitations. This effectively removes the need to structure offerings as cash boxes in most circumstances and they are now less common. However, they may still carry an advantage where the placing in question does not quite fall within the Pre-Emption Group Statement of Principles (for example, if the placing is to fund future, unspecified acquisitions or refinance an acquisition that completed more than six months previously) or due to the fact that their use may mean merger relief is available. Please see page 20 for more information on cash-box structures.

Vendor placings

A vendor placing is used where a company wishes to raise cash to finance an acquisition, and involves shares being allotted by the company to placees on behalf of the seller(s) in exchange for shares in the target company (or other assets).

The company's investment bank will agree to procure placees to subscribe for the new shares, or failing that, to subscribe for the shares itself. The cash received by the company is then paid to the seller(s).

Statutory pre-emption requirements do not apply to vendor placings, on the basis that they do not involve an issue of new shares for cash.

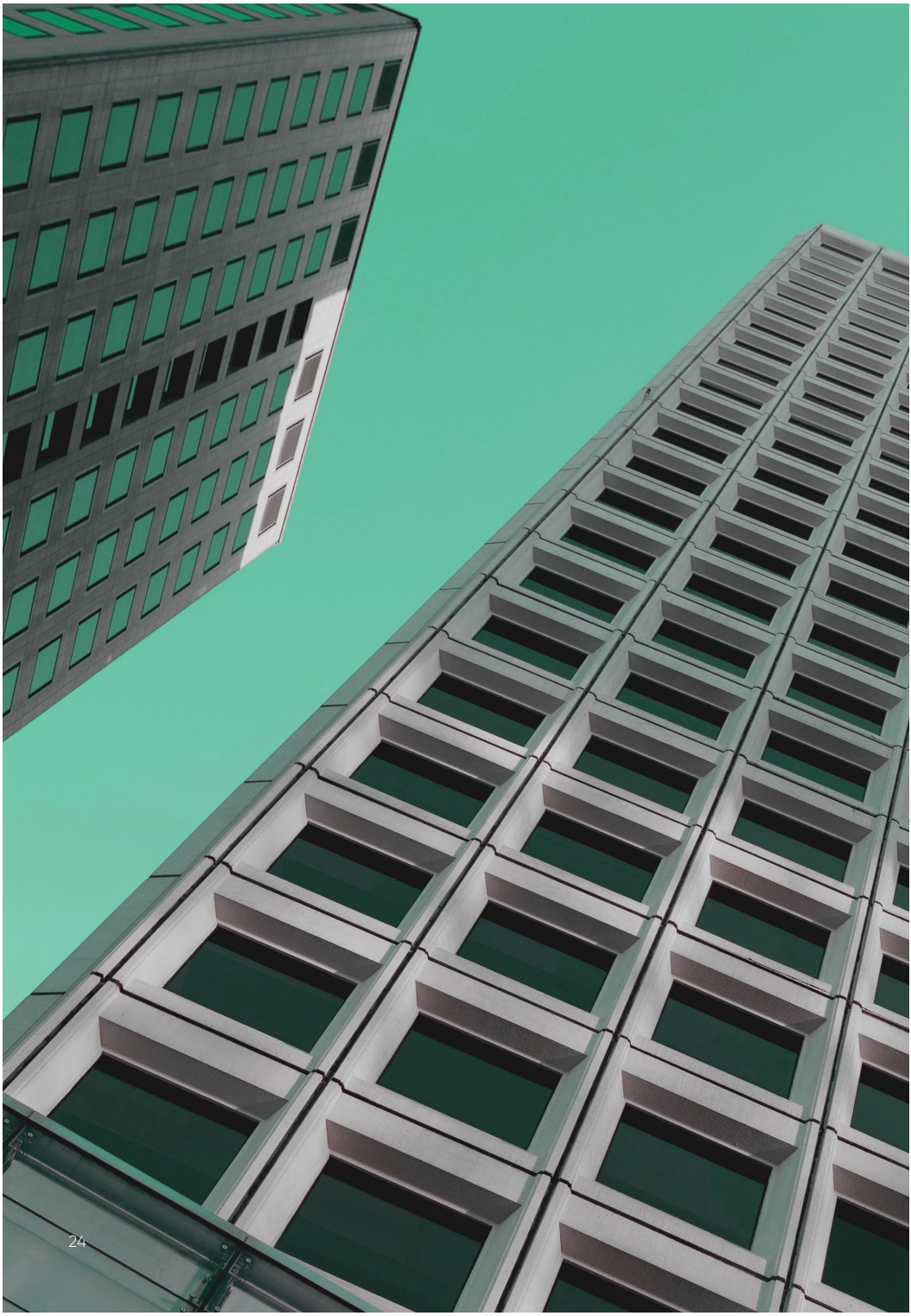
However, the Pre-Emption Group's Statement of Principles recommend that shareholder consent should be obtained where a vendor placing will involve the issue of new shares representing more than 10% of the issuer's issued share capital or where the new shares are placed at a discount of more than 5% unless a clawback is offered to shareholders. The clawback usually takes the form of an open offer.

Finally, it should be noted that vendor placings by companies with a premium listing on the Official List may not be offered at a discount of more than 10% without shareholder approval.

Steps to consider

A UK incorporated issuer who wishes to raise capital through a rights issue, open offer or similar pre-emptive offer to shareholders should consider the following steps:

- as part of the usual processes in preparing its annual report and accounts, starting work on a detailed business description and an operating and financial review needed for inclusion in a prospectus in due course (although these are not required for a reduced disclosure prospectus)
- analysing the geographic spread of its shareholders
- consulting advisers on what financial information-related work may be required in connection with the production of the prospectus
- looking into how the auditors' work on the going concern statement may assist the preparation of the working capital report that will be required as part of the various underlying due diligence workstreams, and
- ensuring that its AGM resolutions reflect the Investment Association share capital management guidelines on allotment authorities (please refer to page 12) if appropriate.



Cash-box structures

UK companies are restricted by statute from issuing securities for cash on a non pre-emptive basis, save to the extent that the shareholders' rights of pre-emption have first been disapplied or the statutory pre-emption procedure complied with.

This restriction does not apply to issues of ordinary shares for 'non-cash' consideration. Like a vendor placing, a cash-box placing is not an issue for cash, but is made in consideration for the transfer to the issuer of shares in another company. Such structures are used in a variety of scenarios. The most common use is in conjunction with a placing, but cashbox structures have also been used in conjunction with a fully pre-emptive open offer or rights issue to create distributable reserves.

However, where cash-box structures have been used for non pre-emptive issues in the past, they have been unpopular with shareholders. Institutional groups have criticised their use on large pre-emptive issues and, as previously explained on page 20, they now fall within the scope of the Pre-Emption Group Statement of Principles. Their use has therefore declined, but they may still be used in certain circumstances.

Step one

The issuer establishes a Newco which is likely to be a Jersey company ("Newco"). The issuer's investment bank then subscribes for some of the Newco ordinary shares (usually in excess of 10%) and the issuer holds the balance of the Newco ordinary shares (usually representing less than 90% of such ordinary shares).

Step two

he investment bank agrees to subscribe for Newco-redeemable no par value preference shares and to undertake to pay to Newco the subscription price for preference shares, conditional on the admission of the issuer's new shares to the relevant market. The subscription price is expressed to be equal to the proceeds of the placing.

Step three

The placing of the issuer's new shares is then conducted in the normal way, the placing proceeds being used by the investment bank to discharge its undertaking to subscribe for the preference shares in the Newco.

Step four

The ordinary and preference shares held by the investment bank in the Newco are then transferred to the issuer, as consideration for the issue of new shares in the issuer to placees.

Step five

Following completion of these steps, the issuer may then access the cash in the Newco either by way of loan, redemption of preference shares or liquidation.

Distributable reserves

A cash-box structure may also be used to obtain the benefit of merger relief and to create distributable reserves in certain circumstances. If merger relief is obtained, any premium received by the issuer over the par value of the new shares would not need to be credited to the company's share premium account.

A redemption of the preference shares in the Jersey company by the issuer would then potentially give rise to distributable reserves in the hands of the issuer equal to the net proceeds of the rights issue (or open offer or placing) less the par value of the new ordinary shares issued. Accountants should be consulted at the earliest opportunity as to the extent to which distributable reserves can be created using a cash-box structure.

The legal and regulatory rules at a glance

	Shareholder approval?	Prospectus required?	Timing
Rights issue	Companies typically have AGM authorities (following the IA relaxation) to allot up to two-thirds of issued share capital on fully pre-emptive rights issues. If annual authorities are insufficient, need to get authority for directors to allot the shares. Also, if annual disapplication is insufficient, consider new disapplication of preemption rights by special resolution (to facilitate implementation, although a rights issue can use the statutory preemption rights if not disapplied).	Yes, although subject to a lower level of disclosure than a full prospectus, if using a reduced disclosure prospectus. A rights issue will typically involve an offer to the public. Regulated market – Rights issue will require a prospectus in any event if it involves the issue of more than 20% of issued share capital. AIM – No 20% rule but will still typically need a prospectus (as a public offer).	If shareholder meeting required, need to hold meeting first – cannot make offer to shareholders until necessary shareholder approvals obtained. Posting of FCA-approved prospectus and circular ('P'). If no shareholder meeting required and pre-emption rights disapplied, rights issue open from P for 10 business days (under LR 9.5.6R). If no shareholder meeting required but pre-emption rights not disapplied, rights issue open from P for 14 clear days (under s562 Companies Act 2006).[1] If shareholder meeting required, it can be held from P + 17.[2] Rights issue then open for 14 clear days (under statutory pre-emption route) or 10 business days (if pre- emption rights disapplied).

	Shareholder approval?	Prospectus required?	Timing
Open offer	Companies typically obtain annual authorities to issue up to one-third in nominal value by open offer. If annual authorities insufficient, need to get authority for directors to allot the shares. Also, if annual disapplication insufficient, consider new disapplication of preemption rights by special resolution (to facilitate implementation, although an open offer can use the statutory preemption rights if not disapplied).	Yes, although may be subject to a lower level of disclosure than a full prospectus if issuer falls within scope. An open offer will typically involve an offer to the public. Regulated market – Open offer will require a prospectus in any event if it involves the issue of more than 20% of issued share capital. AIM – No 20% rule but will still typically need a prospectus (as a public offer).	If shareholder meeting required, offer to shareholders and notice period for meeting can run concurrently. Posting of FCA-approved prospectus and circular ('P'). If pre-emption rights not disapplied, open offer open for 14 clear days (s562 Companies Act 2006). If pre-emption rights disapplied, offer open for 10 business days (Schedule 3, LSE's Admission and Disclosure Standards).[3] If shareholder meeting required, it can be held from P + 17 (but see footnote 2).
Placing/ Cash-box placing	Companies typically obtain annual authorities to issue up to 5% of nominal share capital generally and can obtain annual authorities to issue up to 5% for acquisitions or specified capital investments, in each case for cash without pre-emption. Larger placings would require shareholder approval or a cash box structure (see right). AIM companies may wish to take advantage of a 10% authority (see across).	No prospectus required, assuming that: ■ shares offered only to 'qualified investors' (or to fewer than 150 persons other than qualified investors); and ■ (Regulated market only) placing shares (plus any shares issued in previous 12 months not covered by a prospectus exemption) represent less than 20% of issued share capital).	Placing usually completed within 1 to 2 days with settlement and admission a couple of days later. No pre-emptive offer to shareholders.

	Size limits	Restrictions on level of discount	Pricing
Rights issue	None.	None.	Usually fixed price but bookbuilding process can be built in.
Open offer	The then ABI (now part of the IA) has indicated that rights issues preferred to open offers if increase of share capital is more than 15% to 18%.	The then ABI (now part of the IA) has indicated that rights issues preferred to open offers if discount greater than 7.5%. Premium listing – Maximum 10% discount to the mid-market price at date offer is announced unless shareholder approval obtained. AIM or standard listing – No limits.	Usually fixed price but a bookbuilding process can be built in.
Placing/ Cash box placing[4]	Pre-Emption Group Guidelines – Up to 5% (general) and 5% (acquisition or specified capital investment) in any year and cumulative limit of 7.5% over three years for the general 5% limit Regulated market – Effective limit on size of issue is 19.9% of issued share capital, to avoid need for prospectus.	Pre-Emption Group Guidelines – maximum 5% discount (or higher if using bookbuilding in certain circumstances). Premium listing – Maximum 10% discount to the mid-market price at date placing agreed unless shareholder approval obtained (LR 9.5.10(3)R). AIM or standard listing – No limits.	Shares may be offered to placees at a fixed price or using an accelerated bookbuilding.

Vendor Placings – the then ABI (now part of the Investment Association) has indicated it expects shareholder clawback (ie, offer of the shares to shareholders in proportion to their existing shareholdings, normally by way of open offer) on vendor placings where the issue exceeds 10% of the issued share capital or is at a discount of greater than 5%.

[1] ie, excluding the date on which the prospectus is circulated and the date on which the offer closes.

[2] Assuming two additional days for deemed delivery under the company's articles. This also assumes that (i) there is no longer notice period requirement in the company's articles and (ii) if it is a Main Market or other "traded" company, it will have obtained the necessary annual authority and offered shareholders the facility to vote by electronic means accessible to all shareholders, so that it is not subject to a requirement for a 21 day notice period.

[3] This requirement is also found in the guidance to Rules 24 and 25 of the AIM Rules for Companies.

[4] A cash-box can also be used with a rights issue or open offer, where it may create distributable reserves.

Process and documents

From start to finish, the process for a rights issue or an open offer can take between two to three months.

Given that a prospectus is not usually required for a placing many of the steps below will not be applicable, as indicated.

Because of this, and the fact there is no minimum offer period for a placing, the timetable does not normally span more than one week (unless a general meeting is required).

However, whilst each transaction differs, there are workstreams that are common to them

Appointment of advisory team

At the outset, the issuer instructs its existing advisory team or appoints a new advisory team to include a sponsor, key adviser or nominated adviser (as appropriate depending upon the relevant market, but throughout this guide referred to as "sponsor"), solicitors, reporting accountants, broker, PR agent, share registrar and printers. The printers and the share registrar will usually be organised by the sponsor.

Each adviser will need to enter into an engagement letter with the issuer setting out the scope of the appointment and the terms and conditions including payment. These engagement letters may include limitations on liability and indemnities, all of which will be the subject of negotiation.

Timetable and list of documents

The first step will be for the sponsor to produce a draft timetable and list of documents. The timetable will map out the entire transaction and will set out responsibilities for various actions. This should include, as a first step, the preparation of a transaction structure report by the solicitors to the issuer. The purpose of this report is to identify hurdles to the process. Appropriate resources can then be applied to resolving problem areas. At this early stage, any timetable for the final transaction stages will be fairly 'broad-brush' but should show likely marketing and admission dates.

Due diligence

Although very limited due diligence is undertaken on a secondary issue, it will be important for the solicitors to identify, amongst other things, whether the issuer has sufficient share capital taking into consideration options or warrants, convertible securities and future obligations to issue shares, whether the issuer has sufficient authority in place to allot the shares, the notice periods set out in the issuer articles and whether preemption rights need to be disapplied. Analysis of the shareholder register will also be undertaken to ascertain any overseas shareholder issues.

Prospectus

If a prospectus is required, the steps set out below will be applicable.

Working capital review

To assist the directors in giving the working capital statement in the prospectus, reporting accountants provide a private report to the issuer and its sponsor. This report is based on the issuer's financial projections and supports the directors' working capital statement. Technically, this report needs to cover the 12 month period following admission. However, the sponsor usually requires the report to cover a longer period, typically 18 to 24 months after admission of the new shares.

The report includes details of the basis upon which it was prepared. A commentary is incorporated covering the accuracy of budgets prepared by the issuer, current trading, profit and loss, cashflow and balance sheet projections and available bank facilities (including a covenant analysis). Concluding remarks involve the application of a sensitivity analysis to such budgets and projections and from this a view as to the minimum level of working capital headroom.

Short form accountants' reports

The prospectus (or admission document which constitutes a prospectus in the case of an AIM company) will include short form accountants' reports. These cover the financial track record of the issuer for the last three financial years (one year for a reduced disclosure secondary issue prospectus) or since incorporation, if less and, if relevant, interim accounts.

Production of draft prospectus or admission document

Drafts of the relevant prospectus or admission document are prepared by the sponsor. These are circulated for review by all those involved in the process. This review could include drafting meetings. The prospectus must be submitted to the FCA for approval.

Verification

In view of the duties of disclosure in a prospectus or admission document, it is vital such documents are issued so as not to be misleading. Each director has a duty to ensure this is the case. This duty is discharged through a process called "verification". Whilst verification can often seem longwinded, it is designed to ensure the accuracy of all factual statements and where statements of opinion or belief are included, to confirm that such opinions are reasonable.

Each director cannot be expected to know every fact relating to the issuer and its business. With respect to some statements, it would be perfectly proper for a director to rely on other people, including the company's advisers, to check particular aspects of the relevant document.

Verification requires the production of verification notes (often in electronic form) for which each director takes responsibility. In preparing verification notes and conducting a verification exercise, the following key points should be noted:

- the source for the verification of the statement of fact should be recorded in writing
- a record in writing should be kept with a reasonable basis for each statement of opinion
- each of the directors (including non-executive directors) must be given sufficient time to consider and comment upon the prospectus or admission document and the verification notes so that they are each given time to correct statements, if necessary
- it is not sufficient for directors to simply record that each statement is 'confirmed'; supporting evidence must be provided as an annexure to the verification notes, and
- if statements cannot be verified they must be deleted or amended so that they can be verified.

Research notes

The broker to the proposed secondary issue may wish to publish a research note on the company. There is sensitivity surrounding such notes due to the need to ensure that all investors have access to the same information regarding the issuer.

The research note must not include details about the issuer or its business which are not published in the prospectus or admission document.

Whilst there is a need to avoid any suggestion that the broker is no more than the issuer's agent which could result in the research note being part of the prospectus, it will be important to ensure that the issuer checks the final form of the report for factual accuracy and consistency with the offering documents. Given the sensitivity in relation to such review, it should only occur once. In reviewing any draft, the issuer must limit itself to matters of fact and must not comment on issues of judgement. The broker will be subject to the FCA's Conduct of Business Rules regarding the publication of independent investment research and its own internal policies on research publication.

If the research note is to include financial projections but no profit forecast is to be contained in the prospectus or admission document, then all relevant information must be included in the document as would enable an investor to draw the same financial conclusions. This may include an analysis of the key financial drivers of the issuer's business. The research note must not be used in substitution for publishing a profit forecast in either the prospectus or admission document. If the research note is being used in this way to put a forecast 'into the market', then the prospectus is not complete and fails the statutory tests.

Finally, market practice is that the research note should be published at least two weeks before the pathfinder documents and, in any event, one month before the prospectus or admission document is published.

Marketing presentation

This will be drafted relying upon the pathfinder document (if applicable) and separately verified. The marketing presentation is used in meetings with institutions and other potential investors. The purpose is to explain to potential investors, the issuer, its history, business, track record and prospects.

Contractual documents

The contractual documentation involved in a secondary issue is as follows:

Underwriting agreement

The underwriting agreement is entered into between the issuer and the underwriters and guarantees that the issuer will receive its money, with the underwriters agreeing to subscribe for shares which are not taken up by shareholders and which cannot be sold in the market on behalf of shareholders. The agreement also specifies the underwriting commissions which are payable.

The agreement will be subject to a number of conditions which will typically include the passing of any relevant resolutions at a general meeting and the admission of the new shares to the relevant market. The agreement will also usually include a material adverse change clause allowing the underwriters to terminate the agreement in certain material circumstances.

The underwriting agreement will include various representations, warranties and undertakings in favour of the underwriters, breach of which may give rise to rights of termination as well as damages. It is usual for the underwriters also to have the benefit of an indemnity which protects them for losses arising out of any breach of the representations and warranties or in connection with the prospectus.

Placing agreement – placings only

The mechanics of a placing will normally be summarised in a placing agreement. The placing agreement will contain the same types of representations, warranties and indemnities in favour of an investment bank as in an underwriting agreement.

Placing letter – placings only

The placing letter is the document that ensures that the placees are contractually bound to take up the securities that they have been allocated. The placing letter sets out the number of securities to be subscribed, the price, the total subscription amount payable and relevant details to ensure their orders can be matched in CREST. Most importantly, placees give an irrevocable undertaking to subscribe for the securities allocated to them. In giving this commitment, placees agree to delegate all discretion in the completion of the placing to the broker, in particular, any rights to terminate the placing in the event of a force majeure event or a material adverse change or warranty breach.

Placees are also required to give certain warranties and confirmations to the broker, including that they are qualified investors and that they do not regard themselves as customers of the broker for the purpose of the placing. If any overseas placees are to subscribe, specific placing letters may need to be drafted for them, which include wording to comply with applicable securities law, on the advice of local legal counsel. The inclusion of US placees can complicate the process; therefore, it is important to take US legal advice at an early stage if there is to be a US element to the placing in order to incorporate the required US wording in all the placing documents.

Contract notes – placings only

The placing timetable can be shortened by the use of contract notes instead of a placing letter. A placing announcement is sent to a potential placee and includes the terms and conditions of the placing. This enables the broker to contract with the potential placee over the phone on the basis of those terms and conditions. Once the contract has been accepted orally, the broker sends the placee a contract note summarising the terms. Contract notes will often be used on a bookbuilding exercise.

Provisional allotment letter (PAL) – rights issues only

The PAL is a temporary document of title pursuant to which the new shares are offered to shareholders. In the context of a pre-emptive offer, the PAL will be the 'written offer' made to shareholders. If shareholders are able to accept offers in CREST, a PAL is not sent to them. Until a shareholder receives its share certificate it can trade the PAL in nil paid form or, sometimes in fully paid form. The PAL contains provisions enabling renunciation, splitting and consolidation.

Application form – open offers only

Unlike a provisional allotment letter used on a rights issue, the application form used on an open offer is not a document of title and cannot be traded. It will indicate the maximum number of shares which the shareholder is entitled to apply for. In order to be allotted shares, the shareholder is required to fill in the form and return it to the receiving agents, together with a cheque for the relevant amount. If the form is not returned, the shareholder's entitlement will lapse. If the open offer is being made through CREST, those shareholders holding shares in CREST will not receive an application form, but will use CREST to accept the offer and receive a credit to their stock account in CREST in respect of their open offer entitlements.

10 business days – submission of prospectus to the FCA

The prospectus must be submitted to the FCA for approval at least 10 business days prior to the intended date of approval if the issuer's shares are already admitted to the Official List.

48 hour documents – Official List only

By midday two business days before the FCA is to consider the listing application, an application form and associated documentation, including a copy of the prospectus (approved by the FCA), written confirmation of the number of securities to be allotted (pursuant to a board resolution) and, if a prospectus has not been produced, a copy of the announcement detailing the number and type of securities that are the subject of the application and the circumstances of their issue, must be submitted to the FCA. (If a prospectus has not been produced, the application form must also contain a confirmation that this is not required and details of the reasons why it is not required.)

Further filings – Official List only

By no later than 9am on the day when an application for admission to the Official List is considered, further documents need to be received by the FCA, including payment of the appropriate listing fees and a completed pricing statement.

20 business day documents – AIM only

If a prospectus is required, the prospectus must be submitted to the FCA for approval at least 20 business days prior to the intended date of approval. This period is reduced to 10 business days where the issuer has previously made a public offer.

Three business days – submission of application of documents for the admission of the issuer's shares – AIM only

At least three business days before the expected date of admission of new shares and in addition to a cheque for the listing fees, the LSE must receive an electronic version of the relevant admission document (if a new class of securities is being admitted or a prospectus is required) together with the completed application form, an electronic version of its latest report and accounts and a declaration by the Nomad confirming that the AIM Rules have been complied with in connection with the application.

Board meetings

There are at least five key board meetings of the issuer to be held depending on the type of secondary issue. In order, these are:

1. to approve the engagement of advisers in connection with the transaction and to undertake the secondary issue

2. to approve the marketing presentation

3. to approve the pathfinder document

4. to approve the publication of the prospectus, and

5. to allot and issue the new securities.

Prospectuses

The prospectus regime

The rules in the UK relating to public issues of securities and admission of securities to a "regulated market" (such as the London Stock Exchange's Main Market) are governed by the Prospectus Regulation which (together with supporting delegated regulations) sets out rules governing when a prospectus must be published, what it must contain and the procedure for its approval. In the UK, the Prospectus Regulation is supplemented by further EU-derived regulations which have been implemented in the UK in the Financial Services and Markets Act 2000 ("FSMA") and the Prospectus Regulation Rules published by the FCA.

The Prospectus Regulation Rules set out the details which must be contained in all prospectuses as well as (in conjunction with Part VI of FSMA) the procedure for their approval and publication. Issuers must also have regard to the guidelines on disclosure requirements and the questions and answers on prospectuses both issued by the European Securities and Markets Authority ("ESMA").

Although such non-legislative materials published by ESMA were not incorporated into English law when the UK left the European Union, because the EU laws to which such material relates have largely been retained, the FCA considers that it is still relevant for compliance with regulatory requirments, including FCA Handbook provisions.

When is a prospectus required?

A prospectus will be required in two situations:

1. if an offer of transferable securities is made to the public (which covers any "communication to any person which presents sufficient information on (a) the transferable securities to be offered and (b) the terms on which they are offered, to enable an investor to decide to buy or subscribe for the securities in question… The communication may be made in any form and by any means"), and
2. if transferable securities are being admitted to trading on a regulated market (such as the LSE's Main Market, but not AIM).

If a prospectus is required, it is unlawful and a criminal offence for transferable securities to be offered to the public or for an application to trading on a regulated market to be made, unless an approved prospectus is made available to the public before the offer or application is made.

What exemptions are available?

There are exemptions available which if applicable to an offer of transferable securities to the public, mean that a prospectus is not required. For example, a prospectus will not be required if:

- the offer is addressed to fewer than 150 people, other than "qualified investors", in the UK
- the offer is made purely to "qualified investors" (being persons who can be classified as "professional clients" or "eligible counterparties" under the Markets in Financial Instruments Directive (2014/65) as it applies in England and Wales from time to time after 31 December 2020, known as MiFID, or
- the total consideration of the offer is less than €8 million (or an equivalent amount), when aggregated with offers open during the previous 12 months.

Likewise, there are exemptions from the need for a prospectus on admission to trading on a regulated market, including where:

- the number of shares being admitted represents (over a 12 month period) less than 20% per cent of the shares of the same class already admitted to trading, or
- the shares arise upon the exercise of conversion rights of options or warrants (provided that the resulting shares represent, over a period of 12 months, less than 20% of the shares of the same class already admitted to trading).

Since the end of the Brexit transition period on 31 December 2020, companies can no longer use FCA-approved prospectuses or supplements to offer securities to the public on a non-exempt basis (or admit securities to trading on a regulated market) within the EEA. In those circumstances, companies need to obtain approval from a national competent authority within the EEA to do so (unless an exemption applies under the EU version of the Prospectus Regulation).

Prospectus requirements

If a prospectus is required, it must be approved by the FCA, even if the company is admitted to AIM.

If the company is not listed on a regulated market and has not previously made an offer of securities to the public, the prospectus must be sent to the FCA for approval 20 business days in advance of the intended date of approval of the document. Other issuers must submit the prospectus 10 business days in advance.

Once approved, the prospectus must also be filed with the National Storage Mechanism and published on a website.

The prospectus must consist of three principal components, either combined into a single document or kept separate:

- a summary, providing the key information that investors need in order to understand the nature and the risks of the company and the securities
- a registration document, containing information relating to the company, and
- a securities note, containing information relating to the shares. A company applying for approval of a prospectus by the FCA must ensure the prospectus contains:

- the necessary information which is material to an investor for making an informed assessment of:

  (a) the assets and liabilities, profits and losses, financial position and prospects of the company

  (b) the rights attaching to the shares, and

  (c) the reasons for the issue and its impact on the company, and

- the information items required under the relevant Annexes of the Commission Delegated Regulation (EU) 2019/980 on contents of prospectuses as it applies in England and Wales from time to time after 31 December 2020.

The Annexes set out the specific minimum information requirements for a prospectus. The Annexes that apply in a particular case depend upon various factors including the type of securities being issued, the type of issue, the nature of the company, and whether the company has a complex financial history or has made a significant financial commitment. The issue of shares by way of a secondary issue will typically require the inclusion of the information set out in Annexes 3 and 12.

General duty of disclosure

A general duty of disclosure for prospectuses is set out in article 6(1) of the Prospectus Regulation (and reflected in section 80 of FSMA), which provides that prospectuses shall contain the necessary information which is material to an investor making an informed assessment of:

(a) the assets and liabilities, profits and losses, financial position and prospects of the issuer of the securities and of any guarantor

(b) the rights attaching to the securities, and

(c) the reasons for the issue and its impact on the issuer.

For these purposes the information referred to is anything which is within the knowledge of any person responsible for the prospectus or which it would be reasonable for such person to obtain by making enquiries.

In addition, section 87A of FSMA provides that the FCA cannot approve a prospectus unless it contains the information required by article 6(1) of the Prospectus Regulation.

The rule of thumb to be followed when working on prospectuses is that they must not be misleading. If this standard is achieved then it is unlikely that any breaches of statute or common law will have occurred.

Who is responsible for the document?

The persons responsible for a prospectus (or supplementary prospectus) in relation to an issue of equity shares are:

- the issuer of the securities;
- where the issuer is a body corporate, every director of the issuer at the time the document is submitted and also any person who has authorised himself or herself to be named in the document as a director, for example, someone occupying the office of director although not formally appointed as such or anyone who has agreed to become a director of the applicant either immediately or at a future time;
- in relation to an offer, the offeror (if this is not the issuer) and, if it is a body corporate, its directors;
- each person who accepts, and is stated in the prospectus as accepting responsibility for, or for any part of, the document, and
- each person not falling within any of the above paragraphs who has authorised the contents or any part of the document.
- A person will not be held responsible for a prospectus if it is published without that person's knowledge or consent and, on becoming aware of its publication, that person immediately gives reasonable public notice that it was published without that person's knowledge or consent.

Where a person accepts responsibility for part only of the prospectus, for example, the accountants in respect of the short form report, they are only responsible for that part and only if that part is included in (or substantially in) the form and context to which that person has agreed.

Responsibility statements

The Prospectus Regulation Rules require a statement to be included in the prospectus that each director (and any proposed director) takes responsibility for the prospectus, in particular, that, having taken all reasonable care to ensure that such is the case, the information contained in the prospectus is, to the best of their knowledge, in accordance with the facts and contains no omission likely to affect its import.

Publication

As mentioned above, an application for the admission of shares to listing must involve not only the production and approval of a prospectus but also the publication of that document.

Prospectuses must not be circulated publicly before they have been approved by the FCA. Once approval has been given, the document must be published on a website.

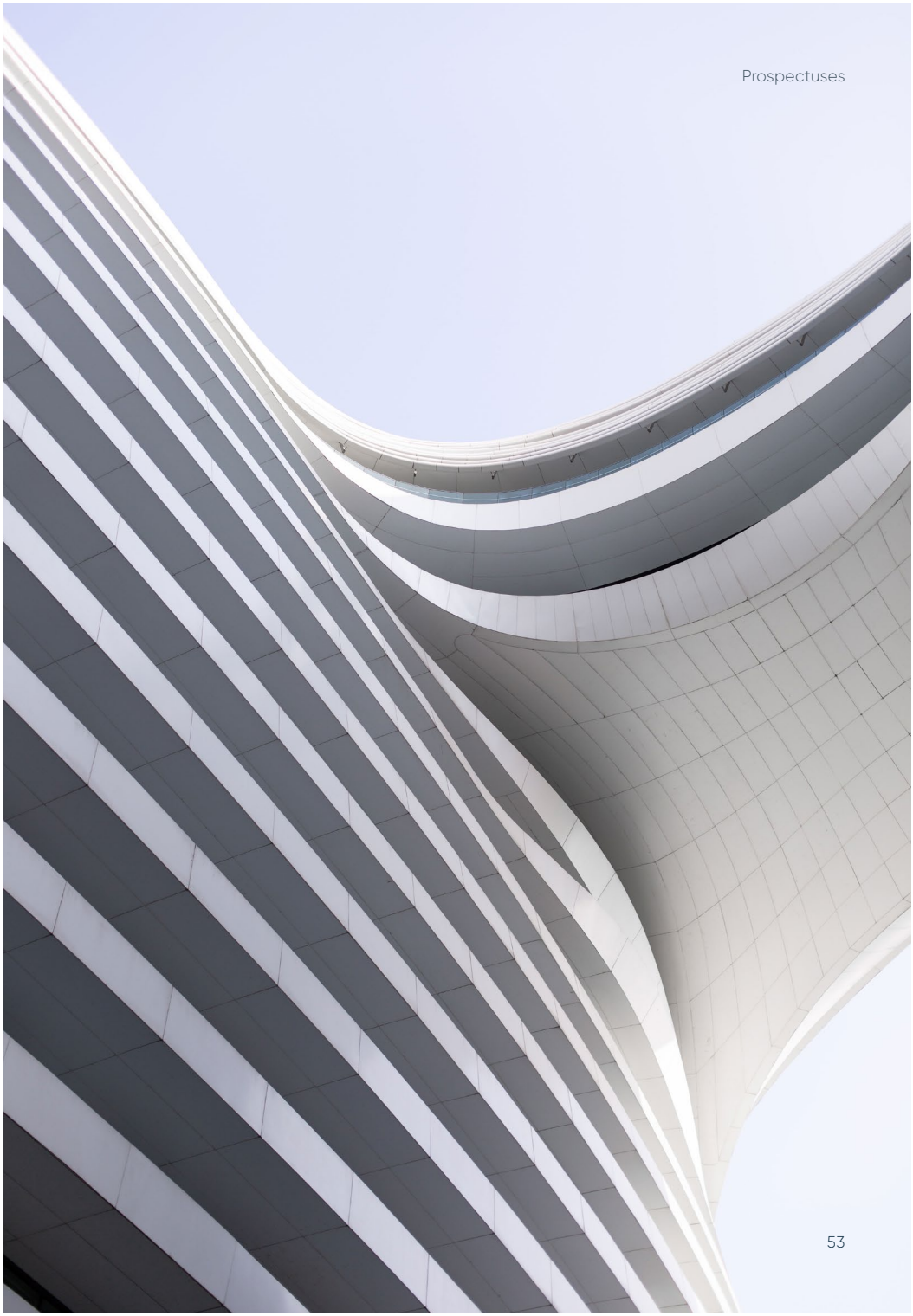
The company must also file the approved prospectus with the National Storage Mechanism.

Admission document – AIM companies

An admission document will only be required to be published by an AIM company on a secondary issue if a prospectus is required, a new class of shares is being issued or the issue is part of a reverse takeover. If an admission document is needed, it is published by making it freely available, for at least one month from admission. Insofar as the admission document is also a prospectus, then it must be approved and filed with the FCA and published online. The company must also make its most recent admission document available, free of charge, on its website, on an ongoing basis.

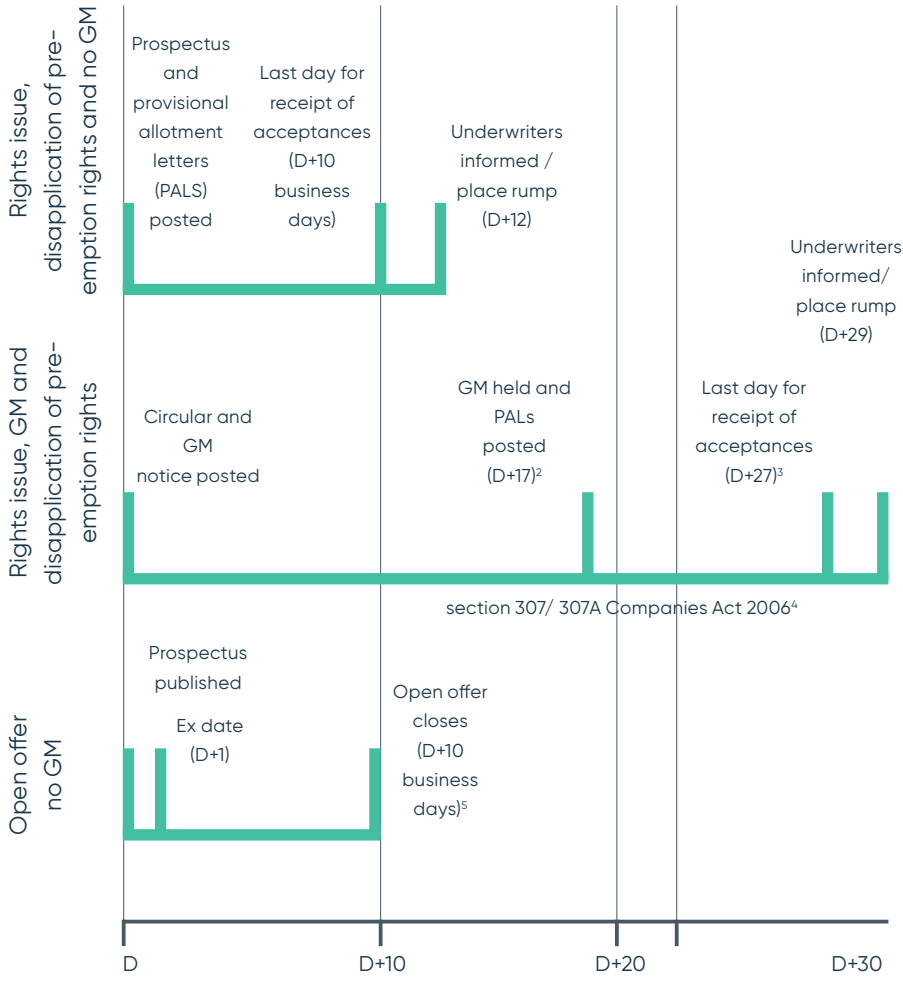
Supplementary prospectus

If, between approval of a prospectus by the FCA and the closing of the offer of securities to the public or admission of the shares to trading on a regulated market, there arises or is noted a significant new factor, material mistake or inaccuracy in the information in the prospectus, a supplementary prospectus containing details of the new factor, mistake or inaccuracy must be submitted to the FCA for approval and be published.



Indicative rights issue and open offer timetable

Schedule 1 – Example timetables1



[1] These timetables assume that the prospectus/circular can be published at the time of announcement of the capital raising. In our experience, the prospectus preparation can easily take at least four to six weeks.

[2] That is a notice period of 14 clear days (section 360(2) Companies Act 2006). 18 days assuming that the issuer's articles state a notice is deemed received 48 hours after being put in first class post. But note that the notice period could be either 14 or 21 clear days, depending on the terms of the issuer's articles of association and (if the issuer is listed on the Official List) whether or not the issuer has passed the appropriate resolution and made electronic voting available to all shareholders.

[3] The minimum rights issue offer period is 10 business days where pre-emption rights have been disapplied.

[4] The notice period could be either 14 or 21 clear days, depending on the terms of the issuer's articles of association and (if the issuer is listed on the Official List), whether or not the issuer has passed the appropriate resolution and made electronic voting available to all shareholders.

[5] Because the open offer can proceed concurrently with any GM notice period that may be required the timetable would require only a relatively immaterial increase to accommodate any need for shareholder approvals.

Jargon

Accelerated bookbuild:

as the name implies, the offering is done on a compressed timetable, usually in one or two days, with a bookbuilding exercise, with little or no marketing of the offer. There is usually no prospectus and the shares are offered on the back of an announcement.

Admission:

admission of securities to listing or trading on, for example, the Official List or AIM.

Bonus issue:

an issue of new shares to existing shareholders in the same proportions as their existing holdings, credited as fully paid up out of reserves.

Bookbuilding:

the process of generating a 'book' of investor demand for shares during an issue. The bookrunner collects firm indications from potential investors as to their level of demand at any given price, so that the price is determined by reference to demand.

Broker or Stockbroker:

the broker may also be the sponsor or Nomad. The broker will advise on market conditions and the potential demand for shares, act as the company's representative to investors and be involved in decisions such as marketing, pricing of securities and the timing of the issue.

Cash-box:

a cash raising structure where, instead of receiving cash as consideration, the issuer receives shares in a cash-box company (whose only assets are its cash reserves, provided by the broker subscribing for preference shares, financed by the proceeds of the issue).

Circular:

a document posted to the holders of securities giving notice of a meeting at which resolutions set out in the circular are to be proposed. The circular provides an explanation of the matters to be taken into account when deciding how to vote on such resolutions.

Clawback:

the right of a company to scale down the number of securities placed depending on the level of applications for securities received from a company's existing shareholders.

Consolidation:

In the context of rights issues, the facility to have fully paid shares represented by two or more provisional allotment letters consolidated into one holding for the purpose of registration.

Contract note:

issued to placees to confirm participation in a placing in circumstances where a placing letter is not used.

CREST:

the paperless settlement system which enables securities to be evidenced otherwise than by certificate and transferred otherwise than by written instrument. The system is run by Euroclear UK & Ireland Limited (formerly known as CRESTCo Limited), pursuant to the Uncertificated Securities Regulations 2001 (SI 2001 No 3755).

Disclosure Guidance and Transparency Rules:

the book of rules published by the Financial Conduct Authority which relate to the disclosure and control of inside information and securities transactions by directors and senior employees and their connected persons, corporate governance reporting, periodic financial reporting and notification and dissemination of information on major shareholdings and certain other matters.

ESMA:

the European Securities and Markets Authority, a European Union financial regulatory agency and supervisory authority, with a role of enhancing the protection of investors and promoting stable and orderly financial markets to safeguard the stability of the European Union's financial system.

FCA:

the Financial Conduct Authority acting in its capacity as the competent authority for the purposes of Part VI of the Financial Services and Markets Act 2000.

Firm placing:

a placing of shares not subject to "clawback".

FSMA:

the Financial Services and Markets Act 2000.

Fully paid:

where the company has received the subscription price payable in respect of a share.

Investor presentation:

a presentation made by the issuer to institutional investors who have been identified by the sponsor or Nomad (as the case may be) as prospective investors for a proposed issue of securities, such as a placing.

Issuer:

the listed or quoted company which is proposing to make the secondary issue.

"Lazy" shareholders:

shareholders who do not take up their rights on a rights issue and after disposal of the "rump" receive cash payments representing any premium over the issue price.

Listing Rules:

the book of rules governing the admission of securities to listing on the Official List maintained by the Financial Conduct Authority and providing for certain continuing obligations for listed companies.

Long form report:

the report on the company prepared by the reporting accountants giving information on the management of the company, track record, financial reporting and other systems.

Main Market:

the London Stock Exchange's Main Market comprising the Premium, Standard, High Growth and Specialist Funds Segments. This is a regulated market and therefore subject to the Prospectus Regulation requirements relating to admission to trading. However, only the Premium and Standard Segments form part of the Official List and are therefore subject to the Listing Rules. The High Growth and Specialist Funds Segments do not form part of the Official List and have their own separate rulebooks.

Market capitalisation:

the aggregate value of an issuer's listed securities. This is calculated by taking the price of a company's listed securities and multiplying by the number of securities in issue. On a "fully diluted" basis the market capitalisation would assume, for instance, that all options and warrants had been exercised and any convertible securities had been converted.

Material contract:

the prospectus or admission document will include a summary of the main terms of each contract which was not entered into in the ordinary course of business (that is with a view to either generating turnover or incurring cost to facilitate turnover) in the two years prior to the date of the prospectus or admission document.

National Storage Mechanism:

the mechanism for storing regulated information provided by Morningstar plc as appointed by the FCA.

Nil-paid rights:

the rights to subscribe for new shares when the amount payable on acceptance of the offer of new shares has not been paid.

Official List:

the Official List of the Financial Conduct Authority. In addition to applying for admission of its equity securities to the Official List, an issuer must also apply to a recognised investment exchange for the securities to be admitted to trading on a regulated market for listed securities (eg the Premium and Standard Segments of the London Stock Exchange Main Market and the NEX Exchange Main Board).

Open offer:

an offer of shares (usually at a discount) to existing shareholders in proportion to their shareholdings. It differs from a rights issue as application forms are used (instead of provisional allotment letters) which cannot be traded nil paid and no arrangements are made for the sale of shares not taken up by shareholders.

Pathfinder board meeting:

a board meeting of the issuer to verify and approve the pathfinder prospectus.

Pathfinder prospectus:

a preliminary offering document or draft prospectus which is used to assess the level of demand from potential investors for the shares on offer. If a prospectus is required, the pathfinder must contain all the requisite information, save as to price. Either the criteria by which the price will be set or the maximum price must be provided.

Pitch or roadshow:

a marketing presentation designed to solicit interest from a potential investor in an issue of securities.

Placee:

a person who subscribes for shares in a placing.

Placing:

an issue of securities on the basis that they are restricted to clients of the sponsor or other financial institution assisting in the placing.

Placing agreement:

the contractual terms and conditions pursuant to which a stockbroker or other financial institution undertakes a placing of shares.

Placing letter:

the offer letter sent out to interested investors by a stockbroker or other financial institution responsible for a placing.

Premium listing:

a listing on the Premium Segment of the Official List. Issuers seeking a premium listing must satisfy more onerous admission and continuing obligation requirements, as opposed to the minimum requirements for a standard listing.

Pro-forma statement:

usually a balance sheet produced to show the resulting balance sheet position and profit and loss and/or earnings per share following, for example, a share issue used to fund an acquisition.

Profit forecast:

an estimate by the company on the basis of certain assumptions, of its after tax profits to the end of an issuer's current financial period. As to what constitutes a profit forecast, the definition set out in the Commission Delegated Regulation on Prospectuses (EU) 2019/980 as it applies in England and Wales from time to time after 31 December 2020 has been replicated in the Listing Rules. It is defined as a form of words which expressly states, or by implication indicates, a figure or minimum or maximum level of likely profits or losses for the current or future financial period(s) or contains data from which a calculation of such a figure can be made, even if no particular figure is mentioned and the word "profit" is not used. This contrasts with a "profit estimate", which is a profit forecast for a financial period which has expired and for which results have not yet been published. Depending on the circumstances, a forecast of earnings per share and revenue figures (if they allow a calculation of profit) may be viewed by the FCA as a profit forecast, as also is a statement of performance against market expectations (if there is a clear market consensus of expectation

that allows a calculation of a floor or ceiling on forecast profits). The requirements for an AIM admission document (where no prospectus is required) are different from the prospectus requirements and include, in the case of AIM, a confirmation in the admission document from the Nomad that it has satisfied itself that the forecast, estimate or projection has been made after due and careful enquiry by the directors of the issuer.

Prospectus:

the document which must be published, under the Prospectus Regulation and Part VI of the Financial Services and Markets Act 2000, by a company which is making an offer to the public or seeking admission of its securities to trading on a regulated market (such as the Main Market), unless an exemption applies. This document will include the information required under the Prospectus Regulation Rules.

Prospectus Regulation Rules:

the book of rules published by the Financial Conduct Authority governing prospectuses: when they are required, their content and the procedure for their approval.

Quiet period or blackout period:

a period during which investment research upon the issuer may not, in some cases, be issued by investment firms connected with the transaction. Main Market IPOs now have the additional restriction that connected research may not be released until at least seven days have passed after publication of an approved prospectus unless unconnected analysts are offered access to the issuer's management alongside connected analysts, in which case connected research may be released from one day after publication of the prospectus.

Registrars:

the registrars maintain the issuer's share register and issue share certificates where shares are still held in certificated form.

Regulated market:

a regulated market under the Markets in Financial Instruments Directive as it applies in England and Wales from time to time after 31 December 2020. UK regulated markets comprise the London Stock Exchange's Main Market (Premium, Standard, High Growth and Specialist Fund Segments), London Metal Exchange, ICE Futures Europe, IPSX, Cboe Europe Equities Regulated Market, Euronext London and the NEX Exchange Main Board. AIM and the NEX Exchange Growth Market are not regulated markets.

Renunciation:

in the context of a rights issue, the act of renouncing or assigning the right to subscribe (when the shares are in nil paid form) or the right to be entered in the company's share register (when the shares are fully paid).

Reporting accountants:

the sponsor will ask a firm of accountants to produce a long form report on the company and a short form report which is reproduced in the prospectus or admission document. The long form report is used by the sponsor to confirm that the company is suitable for listing.

Responsibility statement:

a statement in a prospectus, admission document or other communication to shareholders, in which the persons taking responsibility for the document (usually the company's directors) confirm that they accept responsibility for the accuracy of the document.

Rights issue:

the issue of shares to existing shareholders on a proportionate basis usually on preferential terms, for example, a discount often more than 10% to the current share price. The rights are offered by way of a provisional allotment letter or "PAL" for which a trading facility is established. Shareholders not wishing to take up all or some of their allocation of new shares may sell their rights.

Rump:

the shares not taken up by shareholders on a rights issue.

Short form:

the reporting accountants' report which is reproduced in the prospectus and which reviews the accounts for the published "track record" of the issuer.

SME:

a small or medium company which, according to its last annual or consolidated accounts, meets at least two of the following criteria: (i) an average number of employees during the financial year of less than 250; (ii) a total balance sheet not exceeding €43 million; and (iii) annual net turnover not exceeding €50 million.

Splitting:

in the context of a rights issue, the process of requesting the registrars to split a provisional allotment letter into two or more letters representing, in aggregate, the total number of shares comprised in that PAL, so that they can be renounced in part or to more than one person. A PAL may be split either before or after the rights issue subscription monies are paid, that is nil paid or fully paid.

Sponsor:

every applicant for a listing must have a sponsor to handle the administrative aspects of the application and to take responsibility for promoting the applicant and ensuring its directors are aware of their responsibilities. (On AIM, this person is known instead as the "nominated adviser" or "Nomad", and on the Main Market High Growth Segment, this person is known as the "key adviser").

Standard listing:

a listing on the Standard Segment of the Official List. Issuers seeking a standard listing must satisfy the minimum requirements regarding admission to the Official List and continuing obligations.

Stick:

any unsold shares taken up by sub-underwriters, for example, on a rights issue.

Sub-underwriters:

institutions which agree with the underwriter to take up a proportion of any shares which the underwriter has underwritten.

Tail swallowing:

on a rights issue, where a shareholder sells a sufficient amount of that shareholder's nil paid rights to enable that shareholder to take up the balance of their entitlement under the rights issue (using the net proceeds of that sale to do so).

Vendor placing:

a method of using shares to fund an acquisition by allotting consideration shares to the seller(s) (in exchange for the target shares) which are then placed on behalf of the seller(s) so that they receive cash. The issue falls outside the pre-emption requirements as it is not an issue for cash. A clawback (usually by open offer) is usually offered to the buyer's shareholders if the new shares represent more than 10% of the company's existing issued share capital or are issued at more than a 5% discount.

Verification:

the process by which documents produced on a share issue (or documents to shareholders such as circulars and offer documents) are checked to ensure that the contents are accurate, true and not misleading. The directors must verify the accuracy of the statements in the documents in order to avoid any potential civil or criminal liability.

When-issued trading:

a practice where trading in the issuer's securities takes place prior to admission.

Working capital report:

a memorandum produced by the reporting accountants addressed to the directors of the company advising whether, on the basis of certain assumptions including, for instance, continued access to banking facilities and, if relevant, the proceeds of the proposed issue of securities, the entity has available sufficient cash to finance its business (including any proposed business activities) for, say, the next 12 months being the regulatory requirement, albeit that a sponsor or Nomad may for 'best practice' reasons require a longer period.

Working capital statement:

the paragraph included in a prospectus or circular in which the directors of the issuer confirm that there is sufficient working capital to meet the issuer's requirements for the following 12 months (or other period required by the sponsor or Nomad).

Finally

This guide reviews in general terms the issues arising in connection with secondary issues effected on the UK's equity capital markets. The three key points to bear in mind regarding any such transaction are:

1. identifying issues early in the process so that appropriate resources can be brought to bear on problem solving
2. procedures need to be followed to ensure that all relevant documents are prepared to the highest standards of care and accuracy. Be patient, let your experienced adviser guide you through the process, and
3. organisation of the process assists a successful outcome. For the issuer, this means dividing resources between managing the transaction and the ongoing business.

Should you require any further information, we at Taylor Wessing would be pleased to talk to you.

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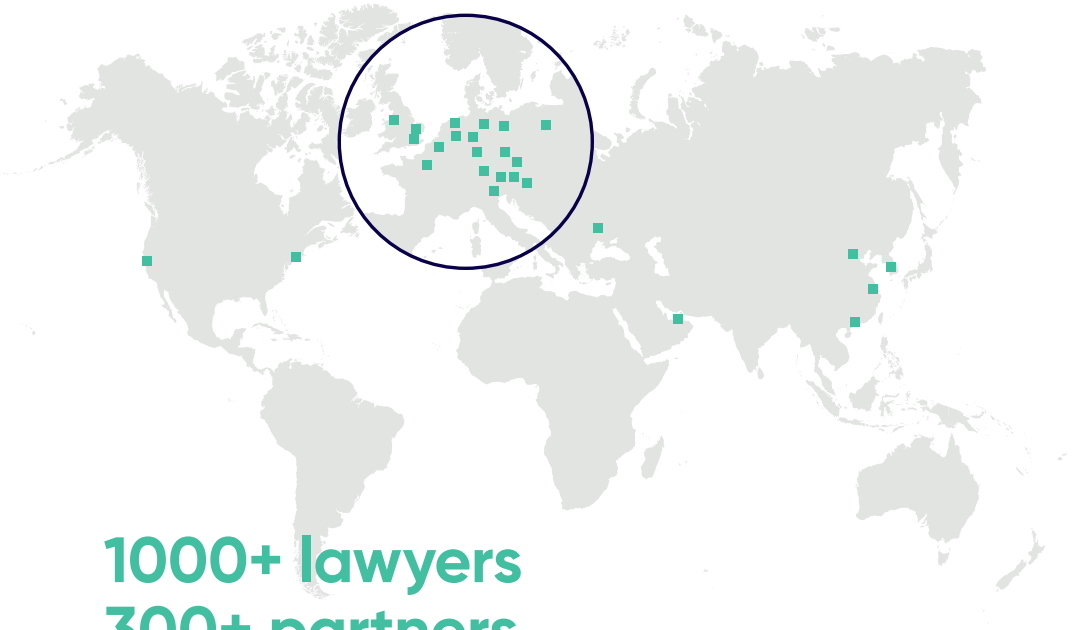

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