

## FCA Announces Further Measures to Assist UK Listed Companies During the Coronavirus (COVID-19) Pandemic

28 May 2020

Over the last two and a half months UK regulators and industry bodies have announced a raft of **temporary measures and guidance** to assist UK listed companies in meeting their financial reporting obligations, holding annual general meetings, complying with the continuous disclosure regime under the EU Market Abuse Regulation (MAR) and raising equity capital.

On 27 May 2020, the Financial Conduct Authority (FCA) published its latest guidance:

- **Primary Market Bulletin No. 28** including a **statement on temporary relief for half year financial reports** and **commentary on going concern statements and shareholder engagement**; and
- **Market Watch No. 63** providing **commentary on market conduct and discipline issues** – including as they relate to disclosure of inside information, market soundings, short selling and conflicts of interest – in the context of the coronavirus (COVID-19) pandemic.

This latest guidance follows on from the FCA's **Statement of Policy** on 26 March 2020 offering a temporary extension to the time period for publication of an annual financial report, and its **Statement of Policy** (and accompanying **working capital technical supplement** and **general meeting technical supplement**) on 8 April 2020 offering temporary relief in relation to working capital statements in prospectuses and circulars and the holding of general meetings in connection with significant and related party transactions.

### Half year financial reports

Under the new guidance set out in Primary Market Bulletin 28, the FCA has granted a temporary extension to the time period for publication of a half year financial report by one month from no later than 3 months from the end of the period to which the report relates to no later than 4 months from the end of such period. The FCA's related **Q&A** on the original temporary relief in relation to annual financial reports have been updated to reflect this new guidance.

The FCA believes that the new guidance complements the original relief granted for the time period for publication of annual financial reports and is consistent with ESMA's **statement** of 27 March 2020 on financial reporting deadlines in light of coronavirus (COVID-19).

Separately, the FCA drew the attention of UK listed companies to **updated guidance** from the Financial Reporting Council (FRC) on corporate reporting including directors' consideration of going concern issues in connection with the publication of a half year report and ESMA's **statement** of 20 May 2020 on the implications of the coronavirus (COVID-19) outbreak on the half year financial reports.

### Going concern statements

In Primary Market Bulletin 28, the FCA has acknowledged that UK listed companies may have concerns about how to address coronavirus-related uncertainties in 'going concern' assessments, particularly where an auditor's review of the directors' going concern assessment may highlight a requirement for the auditor to include remarks in its opinion that could be viewed negatively by investors.

Understandably, given the division of regulatory responsibility between the FCA as securities regulator and the FRC as the regulator with oversight of financial reporting, the FCA has stopped short of providing guidance on the topic, but has emphasised:

- in current circumstances, it is likely that more companies' financial statements will need to include such disclosure as a result of the consequences of the disruption they have and will continue to face;
- investors must be properly informed as to the impact of coronavirus and therefore companies and their auditors should be clear and transparent on such impact; and
- investors should not draw unduly negative inferences from such disclosure and should take into account the unique circumstances.

## Shareholder engagement

In Primary Market Bulletin 28, the FCA has indicated that it welcomes the way in which industry bodies have come together to communicate which market practices are appropriate in light of current circumstances. The FCA noted that it continues to encourage companies to engage with their investors through market disclosure and when making alternative arrangements to physical general meetings, for example, through the provision of alternative means by which shareholders may ask questions of management and exercise their voting rights effectively.

The FCA has reiterated that, when recognising the [temporary revisions](#) to the Pre-Emption Group's guidance on support for non-pre-emptive issues of new shares by UK listed companies announced on 1 April 2020, it noted the important role that companies can play in delivering 'soft pre-emption' in placings and encouraged companies to exercise their rights to be consulted on, and to direct, bookrunners' allocation policies.

With an implicit reference to recent secondary capital raisings that have included the ability for retail investors to participate through [PrimaryBid](#), the FCA has now noted that companies with a large number of smaller shareholders could, but without obligation to do so, consider if there are routes that may be available to make participation in a capital raising available to those shareholders.

## Market conduct and discipline

The FCA has dedicated the entirety of Market Watch 63 to provide a helpful reminder of some of the key market conduct issues that should be considered in the current environment in which there is a focus on compliance by companies with their continuous disclosure obligations under MAR and there is the possibility of a large number of companies seeking additional equity capital.

Market Watch 63 builds on the themes of [Market Watch 58](#), but in the context of the coronavirus (COVID-19) pandemic, and provides commentary on what constitutes inside information and factors companies should consider, delayed and selective disclosure of inside information, maintenance of insider lists and market sounding.

It also provides a reminder of the disclosure requirements and restrictions on [short selling](#) in the UK and a reminder to those institutions seeking to provide corporate finance facilities to companies of the need to ensure corporate clients are treated fairly when negotiating new or existing debt facilities and conflicts are appropriately managed, as originally set out by the FCA in its [Dear CEO Letter](#) on 28 April 2020.

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If you have any questions regarding the matters covered in this publication, please contact any of the lawyers listed below or your usual Davis Polk contact.

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