

The Pre-Emption Group issues new Statement of Principles following Secondary Capital Raising Review

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On November 4, 2022, the Pre-Emption Group (PEG) issued a new version of its [Statement of Principles](#) implementing the recommendations of the Secondary Capital Raising Review (SCRR).

The [Statement of Principles](#) provides that shareholders support resolutions sought by premium listed companies to disapply pre-emption rights of up to 20% on issues of equity securities, subject to certain conditions; follow-on offers are encouraged for retail investors to participate in non-pre-emptive share issues; and 'capital hungry companies' benefit from greater non-pre-emptive capital raising flexibility.

The main differences between the PEG's 2022 [Statement of Principles](#) and its previous [2015 guidance](#) are:

Disapplication of pre-emption rights up to 20%

- **Routine support for disapplication resolutions up to 20%, on a 10%+10% basis.** Similar to the relaxation PEG introduced temporarily during the pandemic, the Statement of Principles provides that shareholders support disapplication resolutions of up to 20%, however, now on a permanent basis. The proceeds of an issue of equity securities using the first 10% under this general disapplication authority should be available for use for any purposes. The proceeds of such an issue using the second 10% should be used only for a transaction which the board determines to be either an acquisition or a specified capital investment, announced contemporaneously with the share issue or occurring in the previous 12 months (increased from a six month period in the 2015 guidance).
- **Conditions to use of 20% disapplication authority.** To take advantage of this greater flexibility for larger non-pre-emptive offers, listed companies should:
 - prior to announcement of the issue, consult with their major shareholders to the extent reasonably practicable and permitted by law;
 - provide an explanation of the background to and reasons for the offer and the proposed use of proceeds, including details of any acquisition or specified capital investment;
 - as far as practicable, make the issue on a soft pre-emptive basis;
 - give due consideration to the involvement in the placing (and/or any follow-on offer) of retail investors and existing investors not allocated shares as part of the soft pre-emptive process;
 - involve company management in the process of allocating the shares issued; and
 - after completion of the issue, make a post-transaction report as described in paragraph 10 of Part 2B of the Statement of Principles, within one week of completion through an RIS. The report should also be submitted to

Retail investor participation in non-pre-emptive offers

Listed companies should give due consideration to whether retail investors and existing investors not allocated shares as part of the soft pre-emptive process should be enabled to take part in the placing. This may be through a retail investor platform; alternatively, or in addition, this may be through a follow-on offer with the following features:

- **Qualifying shareholders.** The offer should be made to shareholders at a record date prior to announcement of the placing, excluding any shareholders allocated shares in the placing and subject to the ability for companies to exclude shareholders resident in jurisdictions with onerous requirements.
- **Individual monetary cap.** Qualifying shareholders should be entitled to subscribe for shares up to a monetary cap to be determined by the company of not more than £30,000; and the company should be able to deal with fractional entitlements as the directors consider necessary or appropriate.
- **Size.** The number of shares issued in any follow-on offer should not exceed 20% of those issued in the placing. This is contemplated in the guidance on disapplication authorities in the Statement of Principles, with both the first and second 10% resolutions including a further authority of no more than 2% to be used only for the purposes of a follow-on offer as described. For the time being, the size of any placing and follow-on offer will be limited in practice by the current 20% threshold imposed by the UK prospectus regime, referred to below.
- **Price.** The issue price of shares in any follow-on offer should be equal to, or less than, the offer price in the placing.
- **Timing.** The company should announce any follow-on offer when, or as soon as reasonably practicable after, it announces the placing. However, the company should ensure that both the price requirement above and the discount limit in LR 9.5.10R can be met.
- **Offer period.** The company should ensure that any follow-on offer is open for a period sufficient to allow qualifying shareholders to become aware of the offer and to reach an investment decision.

Capital hungry companies

Companies that need to raise larger amounts of capital more frequently may seek additional disapplication authority, for use whether or not in connection with an acquisition or a specified capital investment, if the reason for exceeding the limits set out in the Statement of Principles is specifically highlighted at the time at which the request for a general disapplication is made. They may also seek such authority for a longer period than ordinarily is the case (i.e., the shorter of 15 months and the next AGM) – the Companies Act 2006 permits shareholders to disapply pre-emption rights for periods of up to five years where an allotment authority is given for that period.

Companies seeking admission to the Official List of the FCA that wish to be considered a 'capital hungry company' and make use of this approach should disclose that fact in their IPO prospectus. They may choose to put in place a disapplication authority on these bases prior to IPO, with clear disclosure given to investors in the IPO prospectus.

Cash box structures

Consistent with PEG's 2015 guidance, the Statement of Principles reiterates that its principles apply to all issues of equity securities that are undertaken to raise cash, irrespective of the legal form of the transaction. So, even though a "cashbox" transaction may be structured as an issuance of equity securities for non-cash consideration that falls outside the scope of statutory pre-emption, such a transaction should be regarded as being an issuance for cash subject to the limits set out in the Statement of Principles.

Next steps

In its press release announcing the new Statement of Principles, PEG states that companies should obtain shareholder approval for capital raising under the new pre-emption Statement of Principles at their next AGM. In the meantime,

where companies wish to exercise a non-pre-emptive offer under the new regime due to urgent, exceptional circumstances, PEG recommends that issuers follow the [transition arrangements](#) within the SCRR (p. 56) until such a time that shareholders can vote on the new pre-emption regime.

Until the proposals in HM Treasury's UK Prospectus Regime Review outcome paper, as published in March 2022, are implemented and the FCA assumes its anticipated new powers, the current public offer prospectus requirements continue to apply. As such, a retail follow-on offer with a size greater than €8 million would require a public offer prospectus. In addition, the aggregate size of a non-pre-emptive placing and any associated follow-on offer will also continue to be subject to the current 20% threshold for an admission to trading prospectus. This threshold will limit the aggregate value of a placing and any follow-on offer, and will also impact as a practical matter the size of non-pre-emptive offers by capital hungry companies.

Finally, PEG notes also that it is working to establish the governance and membership proposed by the SCCR and will make a further public announcement when this is complete.

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

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