

## UK Corporate Finance Update: Coronavirus (COVID-19)- Related Measures and Guidance

23 March 2020

Our **UK Corporate Finance Update** published earlier this year looked at key developments in corporate finance law, regulation and practice relevant to London-listed companies and their advisers over the last 12 months and forthcoming developments for 2020. With the onset of the coronavirus (COVID-19) pandemic, this memorandum provides a brief summary of the first of what will likely be multiple rounds of measures taken, and guidance issued, as result of the coronavirus (COVID-19) pandemic relevant to London-listed companies and their advisers.

### Equity Capital Markets

#### ***ESMA recommends action by market participants***

On 11 March 2020, following a Board of Supervisors discussion, European Securities and Markets Authority (ESMA) issued a press release setting out a number of recommendations to financial market participants covering business continuity planning, market disclosure, financial reporting and risk management by fund managers.

Specifically relevant to listed companies, ESMA reminded issuers that they should:

- disclose as soon as possible any relevant significant information concerning the impact of coronavirus (COVID-19) on their fundamentals, prospects or financial situation in accordance with their transparency obligations under the Market Abuse Regulation; and
- provide transparency on the actual and potential impact of coronavirus (COVID-19), to the extent possible based on both a qualitative and quantitative assessment, on their business activities, financial situation and economic performance in their 2019 annual financial report and accounts (to the extent not already finalized and published) or otherwise in forthcoming interim financial reports.

#### ***ESMA requires additional reporting of net short positions and sanctions short-term prohibitions on short selling by NCAs***

On 16 March 2020, ESMA issued a decision temporarily requiring the holders of net short positions in shares traded on a European Union (EU) regulated market to notify the relevant national competent authority (NCA) if the position reaches or exceeds 0.1% of the issued share capital of the relevant issuer after the decision.

Ordinarily, the Short Selling Regulation requires net short positions to be:

- reported to the relevant NCA when they are at least equal to 0.2% of an issuer's issued share capital and every 0.1% above that; and
- disclosed to the public when they are at least equal to 0.5% of an issuer's issued share capital and every 0.1% above that.

The obligation under the temporary measure, which took immediate effect, applies to any natural or legal person, irrespective of country of residence. The obligation does not apply to shares admitted to trading on a regulated market where the principal venue for trading of the shares is located in a third country or to market making or stabilization activity.

Following publication of its decision, ESMA has also sanctioned temporary limitations or prohibitions by the NCAs in Belgium (FSMA), France (AMF), Greece (HCMC), Italy (CONSOB) and Spain (CNMV) on short selling by investors in shares traded on the relevant national exchanges.

On 17 March 2020, the Financial Conduct Authority (FCA), the UK's NCA, responded to the ESMA decision and confirmed that it would apply ESMA's amendment to the thresholds for the notification of short selling positions. The FCA stopped short of imposing a temporary limitation or prohibition on short selling, but noted that the situation would be kept under review.

## ***FCA issues guidance for listed companies***

On 17 March 2020, the FCA published Primary Market Bulletin No. 27, focusing on issues arising in light of the coronavirus (COVID-19) pandemic.

In particular, the FCA noted:

- issuers should continue to comply with their obligations under the Market Abuse Regulation and relevant FCA rules;
- whilst it may be challenging to convene disclosure committees, issuers should make every effort to meet their disclosure obligations in a timely fashion;
- it will continue to assess the need for a suspension in trading in accordance with the relevant rules and will challenge the need for a suspension where it considers the situation is more appropriately addressed by a market announcement;
- persons discharging managerial responsibilities (PDMRs) and persons who are closely associated with PDMRs must continue to meet their notification obligations under the Market Abuse Regulation within the prescribed time frame;
- it recognizes that issuers will face logistical challenges when preparing accounts for forthcoming periods, but issuers should put contingency measures in place to minimize any impact of such challenges and consider, for example, whether non-essential parts of reports or reporting cycles can be deprioritized;
- if an issuer is unable to meet its financial reporting obligations (publication of an annual financial report and accounts within four months of the financial year end or half year report within three months of the end of the period) it should take advice and discuss with the FCA and engage with its auditors (who should discuss with the FRC);
- it supports the effective exercise of the rights of shareholders and for premium-listed issuers requires issuers to engage with shareholders on certain matters, but recognizes that virtual methods may be required as a result of circumstances; and
- it will continue reviewing documentation for corporate transactions (for example, circulars and prospectuses) in line with its usual principles as set out on its website.

## **Financial Reporting and Corporate Governance**

### ***FRC issues advice on risk disclosure***

On 18 February 2020, the FRC followed up its annual guidance on the forthcoming corporate reporting season with specific guidance in light of the emergence and spread of coronavirus (COVID-19), particularly with reference to companies either operating in, dependent on supply chains in, or having close trading associations with China.

The FRC encouraged companies to consider carefully what risk disclosures they may need to include in their year-end accounts: companies should consider reference to the possible impact of coronavirus (COVID-19) on their business in the reporting of principal risks and uncertainties. The FRC noted that the extent of the risk (and degree to which it might crystallize) will depend on companies' specific business circumstances.

The FRC noted that a December year-end reporting company would likely report any impact as a non-adjusting post balance sheet event. However, a company with a later reporting date would likely find that any impact would affect its year-end balances.

## ***FRC issues guidance on audit issues***

On 16 March 2020, the FRC published further guidance, but focused on the audit of companies. The FRC noted that some companies and auditors are facing practical difficulties in preparing accounts and carrying out audits resulting from the restrictions on face-to-face meetings and on travel.

However, the FRC is concerned to ensure that the current situation does not undermine the quality of audits and encourages auditors to look at developing alternative audit procedures to gather sufficient, appropriate evidence noting that the auditors will need to consider the impact of coronavirus (COVID-19) on:

- their assessment of risk;
- how sufficient, appropriate evidence is gathered and the work of component auditors is reviewed;
- their assessment of going concern and prospects of a company; and
- the adequacy of management disclosure on the company's prospects.

The FRC also noted that auditors will need to manage companies' expectations and that audit committees in particular will need to understand that auditors will require sufficient time and support to carry out their work, including reassessing work done where circumstances change before the audit is finalized, and this may result in some companies having to revisit their reporting deadlines.

## ***FCA requests a delay to the forthcoming announcement of preliminary financial accounts***

On 21 March 2020, the FCA wrote to all listed companies that have indicated plans to publish preliminary financial statements in the coming days, and to companies that it is aware of who are planning to publish preliminary financial statements shortly, strongly requesting such companies observe a moratorium on the publication of preliminary financial statements for at least two weeks. The FCA has published a similar statement on its website and issued an announcement via RNS today.

The FCA noted that the unprecedented events of the last couple of weeks mean that the basis on which companies are reporting and planning is changing rapidly and, therefore, it is important that due consideration is given by companies to these events in preparing their disclosures. Observing timetables set before the coronavirus (COVID-19) crisis arose may not give companies the necessary time to do this.

Given the unprecedented practical challenges facing listed companies and the audit profession during this time, the FCA opined that the practice of issuing preliminary financial statements in advance of the full audited financial statements is adding unnecessarily to the pressure on companies and the audit profession at this moment. In this regard, the practice of issuing preliminary financial statements is common among UK-listed companies but is not required by either the Listing Rules or the Transparency Directive (as opposed to the requirement that companies publish full audited financial statements within four months of the financial year-end).

The FCA confirmed it is in talks with the FRC and the Prudential Regulation Authority (PRA) about a package of measures aimed at ensuring companies take the necessary time in these uncertain times to prepare appropriate disclosures and address current practical challenges and the three bodies intend to announce details shortly. Listed companies are reminded that the Market Abuse Regulation remains in full force and they are still required to announce inside information to the market as soon as possible unless a valid reason to delay disclosure under the regulation exists.

## ***The Chartered Governance Institute issues guidance on AGMs***

On 17 March 2020, The Chartered Governance Institute (formerly known as ICSA) and Slaughter and May published guidance for companies on annual general meetings (AGMs) in light of the impact of coronavirus (COVID-19). Supported by the FRC, GC100, the Investment Association and the Quoted Companies Alliance, and reviewed by the Department for Business, Energy and Industrial Strategy, the guidance offers practical support for companies on holding AGMs and encourages contingency planning now to ensure companies continue to meet their legal and regulatory obligations.

The guidance explores a number of possible options for companies including:

- adapting the basis on which the AGM is held, for example, by encouraging proxy voting, restricting non-shareholder attendees, live streaming the event and holding a shareholder event later in the year;
- delaying the convening of the AGM, if notice has not yet been issued, recognizing that the latest date to hold an AGM is six months after the financial year end and the potential impact on shareholder authorities, director remuneration and the payment of dividends;
- postponing the AGM, if permitted under the company's articles of association;
- adjourning the AGM; and
- if permitted under the company's articles of association, conducting a hybrid AGM consisting of a physical and virtual meeting.

## Takeovers

### *Takeover Panel moves to remote working*

On 17 March 2020, the Takeover Panel announced that it was implementing a remote working policy for the immediate future. In addition to calling on the usual numbers, parties wishing to contact the Takeover Panel are requested to use email as well where possible at [supportgroup@thetakeoverpanel.org.uk](mailto:supportgroup@thetakeoverpanel.org.uk).

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