

Pre-Emption Group

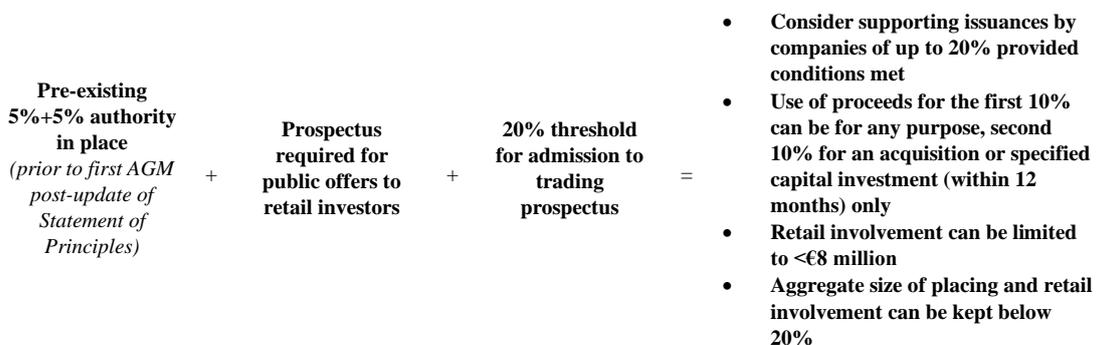
Timing

- 1.1 The Review notes that there are a number of steps that will need to be taken in order for companies to take full advantage of the recommendations above, both for routine support for disapplication resolutions up to 20% on a 10%+10% basis, and case-by-case consideration of higher disapplication authorities for capital hungry companies.
- 1.2 The Review has been working with the PEG [and it expects shortly to publish] an updated version of its Statement of Principles, alongside revised template resolutions and various other documents. These [will] set out expectations of listed companies as they seek disapplication authorities from shareholders going forward. For many companies however, given that the main AGM season for this year has now passed, there could be a significant period before any new disapplication authorities are able to be put in place – for example, companies with a 31 December financial year end will typically not hold their next AGM until spring 2023.
- 1.3 In addition, until the proposals in HMT’s UK Prospectus Regime Review outcome paper, as published in March, are implemented and the FCA assumes its anticipated new powers, the current public offer prospectus requirements will continue to apply. As such a retail follow-on offer with a size greater than €8 million would require a public offer prospectus. 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.
- 1.4 The Review has therefore agreed a transitional approach, as set out below, with the PEG, which should be followed by issuers in relation to non-pre-emptive offers in the period between publication of the revised Statement of Principles and their next AGM, and until updates to the prospectus regime are in place. In order to help companies raise equity capital in this interim period on the basis of the revised Statement of Principles, the PEG recommends that investors, on a case-by-case basis, consider supporting issuances by companies of up to 20% of existing share capital provided they otherwise comply with the conditions in the revised Statement of Principles, namely:
 - (a) **Soft-pre-emption:** As far as possible, the offer should be made on a soft pre-emptive basis;
 - (b) **Use of proceeds:** The proceeds of an offer using the first 10% should be available for use for any purpose. The proceeds of an offer using the second 10% should be used only for a transaction which the board determines to be either a specified acquisition or a specified capital investment, as defined in the Statement of Principles, which is announced contemporaneously with the issue, or which has taken place in the preceding 12-month period and is disclosed in the announcement of the issue;

Pre-Emption Group

- (c) **Explanation:** 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;
- (d) **Consultation:** Consultation with the company’s major shareholders should be undertaken to the extent reasonably practicable and permitted by law;
- (e) **Management involvement:** Company management should be involved in the allocation process;
- (f) **Post-transaction reporting:** After completion of the offer, disclosure via a Regulatory Information Service should be made in relation to the conduct of the placing and compliance with the PEG conditions, as well as being included in the next annual report; and
- (g) **Retail investors:** Due consideration should be given to the involvement of retail investors in the offer, as well as any other existing investors who did not receive shares as part of the soft pre-emptive process. It is noted that until the current public offer prospectus rules are amended, it is not expected that a listed company will make an offer to retail investors requiring publication of a prospectus. Similarly the aggregate of any non-pre-emptive placing and associated retail offer is unlikely ever to exceed the current 20% admission to trading prospectus threshold as requiring publication of a prospectus would be unduly burdensome. Companies should however continue to give due consideration to the interests of retail shareholders and calibrate their offer accordingly, including use of the current €8 million exemption where appropriate, and explain their approach and reasoning in their post-transaction report and next annual report.

1.5 We summarise below the way in which the revised PEG Statement of Principles can be applied to allow companies to make use of the revised approach in the period prior to their next AGM, and before all legislative and regulatory steps are in place to update the UK prospectus regime.



Pre-Emption Group

<p>Pre-existing 5%+5% authority in place (prior to first AGM post-update of Statement of Principles)</p>	+	<p>No prospectus required for public offers to retail investors</p>	+	<p>20% threshold for admission to trading prospectus</p>	=	<ul style="list-style-type: none"> • Consider supporting issuances by companies of up to 20% provided conditions met • Use of proceeds for the first 10% can be for any purpose, second 10% for an acquisition or specified capital investment (within 12 months) only • Retail involvement as set out in Statement of Principles • Aggregate size of placing and retail involvement / follow-on offer can be kept below 20%
<p>Pre-existing 5%+5% authority in place (prior to first AGM post-update of Statement of Principles)</p>	+	<p>No prospectus required for public offers to retail investors</p>	+	<p>75% threshold for admission to trading prospectus</p>	=	<ul style="list-style-type: none"> • Consider supporting issuances by companies of up to 20% provided conditions met • Use of proceeds for the first 10% can be for any purpose, second 10% for an acquisition or specified capital investment (within 12 months) only • Retail involvement as set out in Statement of Principles • Retail involvement / follow-on offer size up to 20% of placing size
<p>Pre-existing 5%+5% authority in place (prior to first AGM post-update of Statement of Principles)</p>	+	<p>Prospectus required for public offers to retail investors</p>	+	<p>75% threshold for admission to trading prospectus</p>	=	<ul style="list-style-type: none"> • Consider supporting issuances by companies of up to 20% provided conditions met • Use of proceeds for the first 10% can be for any purpose, second 10% for an acquisition or specified capital investment (within 12 months) only • Retail involvement can be limited to <€8 million • Retail involvement / follow-on offer size up to 20% of placing size (in practice, will be limited by public offer prospectus requirement)
<p>10%+10% authority in place</p>	+	<p>Prospectus required for public offers to retail investors</p>	+	<p>20% threshold for admission to trading prospectus</p>	=	<ul style="list-style-type: none"> • Use of proceeds to follow 10%+10% authority as set out in template resolutions • Cashbox structure to be used within 10%+10% authority only • Retail involvement can be limited to <€8 million • Aggregate size of placing and retail involvement can be kept below 20%
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Pre-Emption Group

10%+10% authority in place	+	Prospectus required for public offers to retail investors	+	75% threshold for admission to trading prospectus	=	<ul style="list-style-type: none">• Use of proceeds to follow 10%+10% authority as set out in template resolutions• Cashbox structure to be used within 10%+10% authority only• Retail involvement can be limited to <€8 million• Retail involvement / follow-on offer size up to 20% of placing size (in practice, will be limited by public offer prospectus requirement)
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