

Pre-Emption Group

Lord Hill

Via email: ListingsReview@hmtreasury.gov.uk.

January 2021

Dear Lord Hill,

Thank you for the opportunity to respond to your review on listings, including whether companies that are already listed should be able to more easily raise new capital. I am Chairman of the Pre-Emption Group (PEG), whose members represent listed companies, investors and intermediaries. Below I outline the status of the PEG's guidance in this area, our activities throughout 2020 and our initial reflections on areas for reform, including possible greater codification of the better practice seen this year; amendments to rights issue timelines; a greater use of technology throughout the process; and the possibility of learning from international approaches as areas for reform that may help ensure the market become more effective and competitive in the future.

In 2015 the PEG issued a revised Statement of Principles, which enjoys support amongst the membership of the PEG and more widely. Whilst the Statement of Principles is not a rulebook, it aims to provide clarity on the circumstances in which companies may, in the normal course, expect to receive shareholder support for an application to disapply pre-emption rights. The following thresholds are referenced:

- in any one year, not more than five per cent of issued share capital for general purposes; and no more than an additional five per cent of issued share capital only in connection with an acquisition or specified capital investment; and
- over a rolling three-year period, no more than 7.5 per cent of issued share capital in aggregate.

The Statement of Principles also aims to set a framework for discussion between a company and its shareholders concerning the factors to be taken into account when considering the case for disapplying pre-emption rights in a company's own particular circumstances. The Statement of Principles provides in Part Three that companies are able to apply for authority to disapply more than ten per cent of their issued share capital in specific circumstances and where consultation has been undertaken.

When Covid-19 broke in March 2020, and the economy was essentially locked down with little warning, the PEG reacted quickly and on 1st April 2020 we recommended that investors support a relaxation of the guidelines for companies issuing shares, on a temporary basis. We issued a statement recommending investors consider supporting issuances of up to 20 per cent on a case-by-case basis. This additional flexibility reflected the fact that investors clearly wanted the companies in which they had invested to have access to the capital they needed to maintain their solvency during these exceptional circumstances. Certain conditions were suggested encouraging companies to be transparent about their need for additional emergency funds and to demonstrate how they were looking after the interests of all their stakeholders.

These relaxed guidelines, which were endorsed by the FCA, were very well received by the market. Since 1st April 2020 more than £30 billion of much needed additional equity capital has been raised through the market, which has obviously helped companies enormously during this unprecedented period of economic uncertainty. In most circumstances, corporates have also followed the suggested process of consultation and soft pre-emption as suggested in our announcement. Additionally, the average discount to the market price has been low, thereby avoiding significant dilution to retail shareholders. We believe that the support of investors and the speed of access to additional capital has been a real demonstration of the social and economic value of the public equity markets.

The success of these relaxed guidelines and the worries about the second wave of Covid-19 resulted in us extending our temporary relaxation of the guidelines from the end of September to the end of November but we reverted to the expectations of the Statement of Principles requiring full pre-emption except in specific circumstances from 1st December 2020.

What has become clear to us is that un-documented cash placings have become so popular because the alternative process of undertaking a full rights issue is, by comparison, very unattractive for companies. The experience of IAG and Rolls Royce last year clearly demonstrates this. While a rights issue protects all investors by being fully pre-emptive it is expensive, risky and time consuming and can potentially provide opportunities for short-term speculators at the expense of long-term investors.

Members of the PEG remain committed to the principle of pre-emption. We have gathered a range of views from market participants regarding the additional flexibility granted last year, most of them positive. As we have reflected on this feedback, we have identified some aspects of non-pre-emptive issuances that worked well in 2020, and which may benefit from greater expectation-setting or codification. We have also identified issues of timeliness, exposure to market risk, international regulatory differences and the cumbersome processes as barriers to greater use of rights issues, which would obviously offer a much greater potential for capital raising for companies, and which fully respect pre-emptive rights.

We wrote to Nikhil Rathki at the FCA at the end of last year suggesting a more complete review of capital raisings so we are very pleased that you have now been tasked with coordinating this effort (see our letter attached). We plan to continue to gather views from market participants on the advantages and disadvantages of different capital raising options and look forward to sharing these with you in more detail in the coming weeks.

As you know, the UK has always been regarded as a model for high governance standards and the protection of shareholder rights. The PEG is specifically focused on protecting the rights of existing shareholders on companies already listed. Investors understand that their shareholder rights bring with them responsibilities for the companies that they invest in and that they are expected to act as good stewards of those companies. To do this effectively they have to engage with companies constructively, but ultimately hold them to account through their vote at annual general meetings. Any relaxation of listing requirements, therefore, has to be very careful not to dilute shareholders rights when expectations of the responsibilities of shareholders, and their actions better to integrate a wide range of relevant environmental and social factors into their investment decision making, is growing.

Thank you once again for the opportunity to provide an initial response to this important review. We hope that we might be able to organise a call with you to further discuss our recent experiences of and our thoughts on reform.

Yours sincerely,



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Please note that I am also Chairman of the Investor Forum CIC which will also be submitting a response to your review.