

UK Financial Conduct Authority Updates on COVID-19 Issues for Listed Companies

June 8, 2020

On 27 May 2020, the FCA in the UK published a newsletter outlining its continuing expectations of issuers in the UK on market conduct and transaction reporting issues.

The FCA also published a Primary Market Bulletin setting out updates for issuers on temporary relief for the timing of the publication of half-yearly financial reports, going concern assessments and shareholder engagement.

FCA's market conduct expectations

In their newsletter, the FCA states, *inter alia*, that:

- Issuers are reminded that it is important to maintain adequate procedures, systems and controls to comply with their disclosure obligations under the Market Abuse Regulation.
- Issuers should continue to assess carefully what information constitutes inside information (under MAR) as COVID-19, and public policy responses to it, may alter the nature of information that is material to a company's prospects and material in the context of a recapitalisation.
- Issuers should carefully judge what information a reasonable investor would now be likely to use as part of their investment decisions in the context of COVID-19. For example, information that could have a significant effect on a company's share price could include (i) details on future financial performance, such as access to finance and funding (this includes through government schemes, significant changes in cash flow patterns, force majeure or termination rights in material contracts or financial arrangements, and changes to dividends or buy-back schemes) and (ii) their ability to continue or resume business (such as changes in strategy or business plans, business resumption plans, arrangements for staff returning to work and supply chains).
- Issuers should also carefully monitor whether any new information is materially different from previous forecasts, guidance or signals announced publicly, which now would likely be misleading to investors. For example, missing previous forecast earnings, revenue or related KPIs. Issuers should consider if the new information is inside information and needs to be disclosed as soon as possible.
- Given the different risks that arise from working from home, issuers may want to reaffirm that persons on insider lists are aware of when they have access to inside information and of their duties in relation to insider dealing.
- Regarding delayed disclosure of inside information, given market uncertainties and changed working environments, issuers should be extra alert to the possibility of leaks and rumours, and whether there has been a breach of confidentiality. Companies should prepare holding announcements in advance to be used if there is an actual or likely breach and disclose the information as soon as possible once the conditions for delay are no longer met.

The FCA also reminds market participants of their MAR inside information obligations generally.

FCA's Primary Market Bulletin

The FCA provided an update for issuers to address challenges raised by COVID-19, including the following:

- Additional month for half-yearly financial reports

The FCA has confirmed that listed companies needing extra time to complete their half-yearly financial reports will have one additional month to publish them. This additional time means that if half-yearly financial reports are published within four months of the end of the relevant reporting period, companies will not face enforcement action. This is intended to be temporary, while the UK faces the disruption of COVID-19 and its aftermath.

- Going concern assessments

The FCA understands the difficulties issuers face where an auditor's going concern assessment gives rise to a need to include remarks in their audit opinion. Nevertheless, the FCA urges issuers and auditors to be clear and transparent about COVID-19 impacts in financial statements and encourages market participants, including intermediaries, not to draw unduly adverse inferences from these disclosures, nor from issuers using extra time as permitted to publish their annual and half-yearly financial reports.

- Shareholder engagement

The FCA encourages issuers to consider additional ways to engage with and allow shareholders to participate, for example, considering ways for shareholders to ask questions and exercise voting rights effectively where alternative arrangements to physical general meetings are made. Where issuers have provisions to hold virtual general meetings, the FCA continues to support this as a means for gaining shareholder approval.

When conducting placings, the FCA encourages issuers to contribute to delivering "soft pre-emption rights" by exercising the right to be consulted on, and to direct, bookrunners' allocation policies. In this context, issuers with large numbers of smaller shareholders are recommended to consider routes to make participation in a capital raising available to those shareholders. However, the FCA recognises that this may not be feasible due to time pressures on issuers or legal risks.

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