



UK SECONDARY CAPITAL RAISING REVIEW

Issued 2 December 2021

ICAEW welcomes the opportunity to comment on the *UK Secondary Capital Raising Review* published by HM Treasury on 12 October 2021, a copy of which is available from this [link](#).

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ANSWERS TO SPECIFIC QUESTIONS

Question 1. Can and should the overall duration and cost of the existing UK rights issue process be reduced? In what ways?

1. We would support making certain changes to the rights issue process to reduce its duration and cost to the extent that any changes do not lessen standards of disclosure and investor protection.
2. Issuers could have options to provide streamlined information for a rights issue according to the mix of their shareholders and the jurisdictions into which the offer is made.
3. We share a widely held view that a shorter document, as an alternative to a prospectus, would be appropriate in a rights issue. We believe that alternative documentation should include:
 - the background to the fund-raising;
 - the use of proceeds;
 - confirmation of compliance with relevant disclosure obligations; and
 - a working capital statement.
4. An alternative document will present issuers with global investors with the same challenges that existing provisions to reduce information in an investment circular do. Issuers with global investors (in particular, in the US) must be mindful of regulations and market practices that may 'trump' the UK requirements. We do not think that this should not prevent further revisions to the rules, but it should be recognised that revisions may not be fully utilised unless they are consistent with the regulations and practices in other key capital markets.
5. We understand that certain market participants have questioned whether the private due diligence exercise commonly required by sponsors in relation to the working capital statement is valued by investors, or a proportionate use of time and resources. We do not consider this to be a dispensable part of the process. This practice is long-established in the market and well understood. The rigour of diligence applied to working capital statements is essential to investor protection and promotes confidence. The exercise regularly results in changes to the terms or scale of secondary fund raises and, in a significant minority of cases, in a modified working capital statement with additional disclosure to shareholders.

Question 2. Should new technology be used in the process to ensure that shareholders receive relevant information in a timely fashion and are able to exercise their rights and, if so, how?

6. Yes, there are developments based on technology already in use, and the direction of travel must include new technology that allows shareholders (through to beneficial owners)
 - to receive information and respond more quickly to pre-emptive offers; and
 - to make electronic payments.

Question 3. Are there fund-raising models in other jurisdictions that should be considered for use in the UK? For example, the use of cleansing notices in lieu of prospectuses on secondary capital raisings in Australia and also the Australian ANREO, AREO (or RAPIDS), SAREO and PAITREO structures?]

7. We are open to alternative documentation to a prospectus being used (see our response to Q1). The option to use a cleansing notice (or other document) on further capital raisings is worth considering alongside any consequential implications relating to the jurisdictions into which the offer may be made and the make-up of the shareholder register, and for the assurance needed to support the issuer's diligence process.
8. An alternative route of an ongoing disclosure regime, or enhancements to the annual report, could enable issuers to meet the relevant requirements for investors in jurisdictions such as the US, in a shorter timescale. We do not, however, advocate this route because of the likely disproportionate cost to those issuers that either do not issue equity on a regular basis or do

not have a significant US shareholder component. We are mindful also of criticisms that annual reports are generally overly long, and other forms of communication to shareholders may be more appropriate. For issuers that do not regularly fundraise, enhancements may not meet the primary purpose of information in the annual report that it is decision-useful to the users, and risk being 'lost'.

Question 5. Are there any refinements that should be made to the undocumented secondary capital raising process in light of recent experiences during the Covid-19 pandemic?

9. The recommendation of the Pre-Emption Group for investors to apply additional flexibility in considering issuances of shares on a non-pre-emptive basis enabled many companies to make use of the ability to issue up to 20% of share capital without a prospectus, and to access capital quickly during the pandemic. It would be worth considering whether a permanent, targeted provision for flexibility could boost the UK's competitiveness without undermining the commitment of the market to the principles of pre-emption.

Question 7. In what other ways should the secondary capital raising process in the UK be reformed?

10. A potential reform could introduce flexibility with secondary capital raising in innovative growth sectors. The requirement for a prospectus precludes small cap companies from raising capital quickly, and they resort to raising equity finance via placings. Companies in tech-related and life science sectors are particularly affected as they typically require regular fundraising. In these sectors there is a case for permitting more than the 20% threshold, and up to 30-40% of issued share capital on a rolling annual basis, exempt a prospectus, as they are considered strategically significant. The Hill UK Listing Review¹ made recommendations designed to attract companies in such sectors to go public on UK markets. Adapting the rules for further capital raising in the manner suggested complements the aim of the Hill recommendations. It is also consistent with the current HM Treasury proposals² to give the FCA the discretion to set rules on when a further issue prospectus is required. Appropriate criteria and protections can be set out in dedicated listing rules.

¹ UK Listings Review - GOV.UK (www.gov.uk)

² UK Prospectus Regime: a consultation - GOV.UK (www.gov.uk)