Georgeson

Georgeson Memo: Pre-Emption Group FTSE 350 Implementation Q1

31 March 2023

Introduction

This memo looks at how FTSE 350 companies have so far approached the updated Pre-Emption Group Statement of Principles.

The biggest change to the Pre-Emption Group's guidance[1] is that it now allows UK-listed companies to issue shares up to an overall level of 20% of issued share capital without pre-emptive rights, under the proviso that this be split into a 10% general authority and a 10% authority in relation to an acquisition or a "specified capital investment".

In the first quarter of 2023, less than a quarter of FTSE 350 companies sought share issuance authorities without pre-emptive rights to this new 10%+10% level. Despite all receiving favourable vote recommendations from proxy advisors ISS and Glass Lewis, the 10%+10% authorities on average received lower levels of support than resolutions seeking 5%+5% authorities.

Looking forward to the second quarter of 2023, and considering only FTSE 100 companies, it seems that the share of companies requesting 10%+10% authorities has increased somewhat, but remains a minority. It remains to be seen how investors will continue to react to these higher levels of share issuance authorities.

The following points are covered in this memo:
1. Background to the changes by the Pre-Emption Group
2. Share Issuance Resolutions without Pre-Emptive Rights among FTSE 350 Companies in Q1
3. Share Issuance Resolutions without Pre-Emptive Rights among FTSE 100 Companies in Q2
4. Current European best practices in terms of generic dilution without pre-emptive rights
5. Proxy Advisor Guideline Updates to Share Issuance Resolutions
6. Georgeson Investor Survey: How investors are approaching (10%+10%) share issuance votes
7. Mark Austin argues why the new PEG guidance should receive investor support

[1] https://www.frc.org.uk/investors/pre-emption-group

1. Background to the Changes by the Pre-Emption Group

In October 2021, the Treasury appointed Freshfields Bruckhaus Deringer lawyer Mark Austin to conduct the **UK Secondary Capital Raising Review**[2]. The 6-month review puts forward recommendations on how raising secondary capital can be made easier, cheaper, and quicker in order to make listing in the UK a more attractive prospect to companies.

The Review was published on 19 July 2022 and included a set of recommendations for the Government, The Financial Conduct Authority (FCA), and the Pre-Emption Group (PEG). One of the most significant recommendations from the review is to give companies the ability to issue up to 20% of their issued share capital (ISC) without pre-emptive rights within in a 12-month window. This would increase the limit for the general authority to issue shares from 5% to 10% as well as the limit for the specific authority to issue shares from 5% to 10%. The Government, the FCA, and the PEG all welcomed the recommendations put forth in the Review.

On 4 November 2022, the PEG updated its **Statement of Principles**[3] to align itself with the recommendations from the UK Secondary Capital Raising Review. The principles state that a disapplication of pre-emption rights is likely to be supported when it means the newly redefined size criteria: *"the company may seek authority by special resolution to issue non-pre-emptively for cash equity securities representing:*

- *no more than 10% of issued ordinary share capital in any one year, whether or not in connection with an acquisition or specified capital investment (with a further authority of no more than 2% to be used only for the purposes of making a follow-on offer […]);*
- *and no more than an additional 10% of issued ordinary share capital provided that, in the circular for the Annual General Meeting at which such additional authority is to be sought, the company confirms that it intends to use it only in connection with an acquisition or a specified capital investment 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 (with a further authority for no more than 2% to be used only for the purposes of making a follow-on offer of a kind contemplated by paragraph 3 of Section 2B below)."*

[2] https://www.gov.uk/government/publications/uk-secondary-capital-raising-review
[3] https://www.frc.org.uk/investors/pre-emption-group

2. Share Issuance without Pre-Emptive Rights among FTSE 350 Companies in Q1

In the first quarter of the year, 22 non-investment trust FTSE 350 companies have put forward resolutions relating to the issuance of shares without pre-emptive rights.

Company	Index	Date	Res. with lower level of support	Level of Authority
ASOS Plc	FTSE 250	11/01/2023	99.7%	5%
Diploma Plc	FTSE 250	18/01/2023	96.8%	5%+5%
WH Smith Plc	FTSE 250	18/01/2023	99.3%	5%+5%
Auction Technology Group Plc	FTSE 250	26/01/2023	96.9%	5%+5%
Britvic Plc	FTSE 250	26/01/2023	93.9%	5%+5%
Imperial Brands Plc	FTSE 100	01/02/2023	99.5%	5%
The Sage Group plc	FTSE 100	02/02/2023	99.3%	5%+5%
AJ Bell Plc	FTSE 250	08/02/2023	99.8%	5%
Future Plc	FTSE 250	08/02/2023	89.7%	**10%+10%**
Grainger Plc	FTSE 250	08/02/2023	95.5%	**10%+10%**
Compass Group Plc	FTSE 100	09/02/2023	95.3%	5%+5%
easyJet Plc	FTSE 250	09/02/2023	80.1%	**10%+10%**
Tritax Eurobox Plc	FTSE 250	09/02/2023	92.4%	5%+5%
Victrex Plc	FTSE 250	10/02/2023	90.8%	5%+5%
SSP Group Plc	FTSE 250	16/02/2023	99.2%	5%+5%
Virgin Money UK Plc	FTSE 250	21/02/2023	94.2%	5%+5%
Integrafin Holdings Plc	FTSE 250	23/02/2023	98.9%	5%+5%
Diversified Energy Co. Plc	FTSE 250	27/02/2023	98%	5%
Paragon Banking Group Plc	FTSE 250	01/03/2023	99.8%	5%+5%
Chemring Group Plc	FTSE 250	15/03/2023	90.9%	**10%+10%**
Safestore Holdings Plc	FTSE 250	15/03/2023	98.1%	10%
Crest Nicholson Holdings Plc	FTSE 250	23/03/2023	97.4%	**10%+10%**

Average level of support for authority to issue shares without pre-emption rights limited to **5%**	**98.2%**
Average level of support for authority to issue shares without pre-emption rights **in Connection with an Acquisition of Other Capital Investment limited to 5%**	**96.4%**
Average level of support for authority to issue shares without pre-emption rights limited to **10%**	**93.1%**
Average level of support for authority to issue shares without pre-emption rights **in Connection with an Acquisition of Other Capital Investment limited to 10%**	**90.7%**

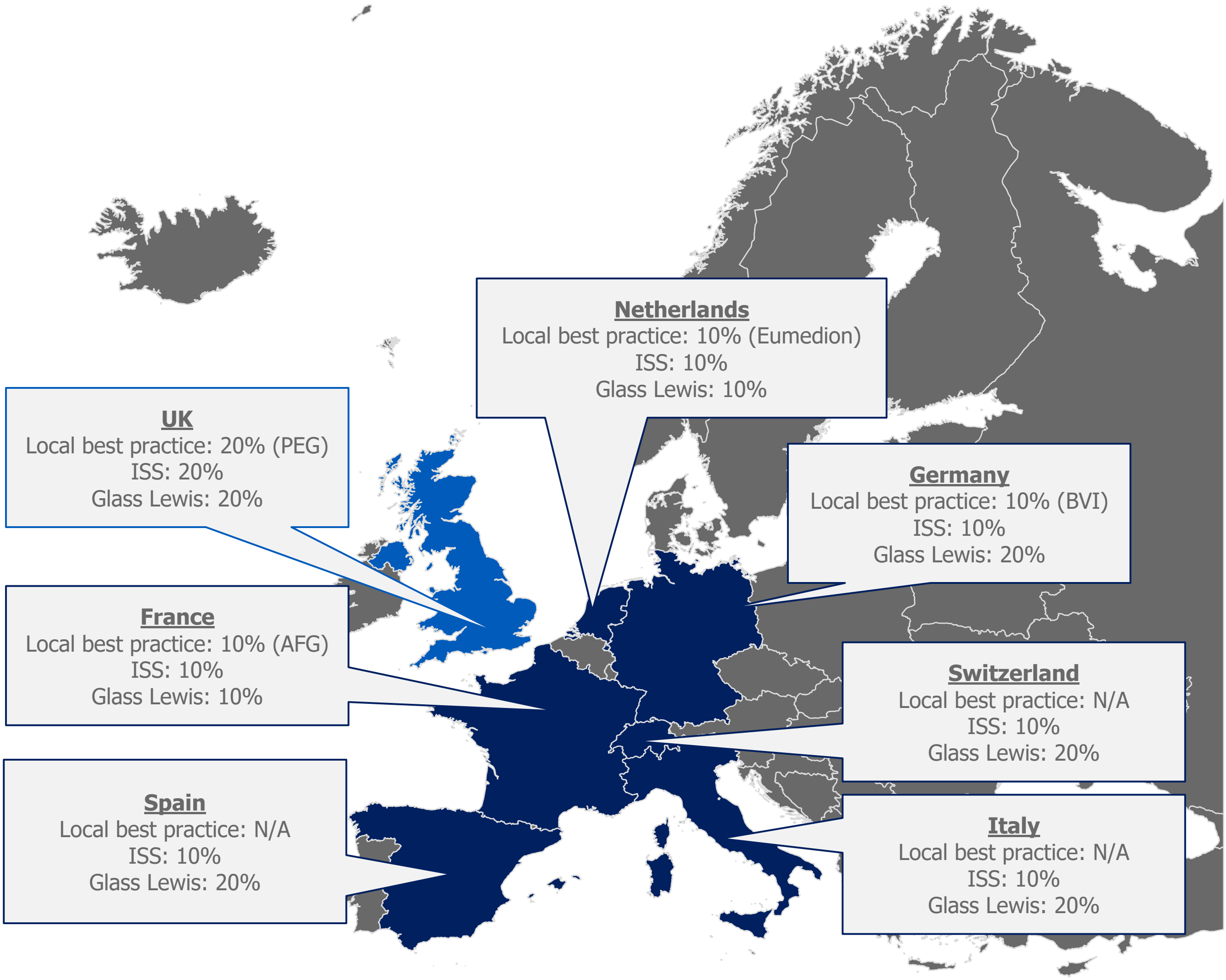
4. Share Issuance without Pre-Emptive Rights among FTSE 100 Companies in Q2

As of 31 March 2023, 43 FTSE 100 companies (excluding investment trusts) published notices of meeting that included authorities to issue shares without pre-emptive rights. Of these 43 companies, 12 companies (i.e. 29%) have put forward resolutions seeking the 10%+10% share issuance authorities.

Company	Date	Level of Authority
Rio Tinto Plc	06/04/2023	5%
British American Tobacco plc	19/04/2023	5%
Haleon Plc	20/04/2023	5%+5%
RELX Plc	20/04/2023	5%+5%
SEGRO Plc	20/04/2023	**10%+10%**
Beazley Plc	25/04/2023	**10%+10%**
Entain Plc	25/04/2023	5%+5%
NatWest Group Plc	25/04/2023	5%+5%
Anglo American Plc	26/04/2023	2.5%
Bunzl Plc	26/04/2023	5%+5%
Croda International Plc	26/04/2023	**10%+10%**
Persimmon Plc	26/04/2023	5%+5%
Smith & Nephew plc	26/04/2023	**10%+10%**
Admiral Group Plc	27/04/2023	5%+5%
AstraZeneca Plc	27/04/2023	**10%+10%**
BP Plc	27/04/2023	5%+5%
CRH Plc	27/04/2023	10%
Flutter Entertainment Plc	27/04/2023	5%+5%
London Stock Exchange Group Plc	27/04/2023	**10%+10%**
Taylor Wimpey Plc	27/04/2023	**10%+10%**
The Weir Group Plc	27/04/2023	5%+5%
Pearson Plc	28/04/2023	5%+5%
Smurfit Kappa Group Plc	28/04/2023	5%+5%
Ocado Group Plc	02/05/2023	**10%+10%**
Barclays PLC	03/05/2023	5%+5%
GSK Plc	03/05/2023	5%+5%
Reckitt Benckiser Group Plc	03/05/2023	5%+5%
Standard Chartered Plc	03/05/2023	5%+5%
Unilever Plc	03/05/2023	5%+5%
Aviva Plc	04/05/2023	5%+5%
BAE Systems Plc	04/05/2023	5%
Mondi Plc	04/05/2023	5%
Phoenix Group Holdings Plc	04/05/2023	**10%+10%**
HSBC Holdings Plc	05/05/2023	5%+5%
InterContinental Hotels Group Plc	05/05/2023	**10%+10%**
Rightmove Plc	05/05/2023	5%+5%
abrdn Plc	10/05/2023	5%
Hiscox Ltd.	11/05/2023	**10%+10%**
Rolls-Royce Holdings Plc	11/05/2023	5%
WPP Plc	17/05/2023	5%+5%
ConvaTec Group Plc	18/05/2023	**10%+10%**
Lloyds Banking Group Plc	18/05/2023	5%+5%
Intertek Group Plc	24/05/2023	5%+5%

5. Current European best practices in terms of generic dilution without pre-emptive rights

Of the seven biggest European markets, the UK has now raised its "best practice" share issuance limit without pre-emptive rights. Investor bodies in France[4], Germany[5], the Netherlands[6], however continue to set the limit on generic share issuances without pre-emptive rights at 10%. This is in line with the maximum applied by ISS across Continental Europe. Italy, Spain and Switzerland do not have a universally accepted maximum expectation from investor bodies.



[4] https://www.afg.asso.fr/wp-content/uploads/2021/01/afg-recogouve-220118web.pdf
[5] https://www.bvi.de/en/services/samples-and-working-aids/analysis-guidelines-for-shareholder-meetings-alhv/
[6] https://en.eumedion.nl/clientdata/217/media/clientimages/Voting-guideline-share-Issuance-authorisations.pdf

6. Proxy Advisor Guideline Updates to Share Issuance Resolutions

ISS

United Kingdom

Institutional Shareholder Services (ISS) states in its 2023 guidelines[7] for the UK and Ireland that, in regard to the authority to issue equity with and without pre-emptive rights, it *"will generally support resolutions seeking authorities in line with the Investment Association's Share Capital Management Guidelines and the Pre-Emption Group Statement of Principles"*. Their general recommendation is to vote for share issuance resolutions without pre-emptive rights unless *"the routine authority to disapply pre-emption rights exceeds 20 percent of the issued share capital, provided that any amount above 10 percent is to be used for the purposes of an acquisition or a specified capital investment. For the general disapplication authority and specific disapplication authority, a further disapplication of up to 2 percent may be used for each authority for the purposes of a follow-on offer."*

Continental Europe

However, ISS's Continental Europe voting guidelines[8] recommend voting *"for issuance authorities without pre-emptive rights to a maximum of 10 percent (or a lower limit if local market best practice recommendations provide) of currently issued capital as long as the share issuance authorities' periods are clearly disclosed (or implied by the application of a legal maximum duration) and in line with market-specific practices and/or recommended guidelines (e.g. issuance periods limited to 18 months for the Netherlands)."*

Glass Lewis

United Kingdom

Glass Lewis states in its guidelines[9] for the UK that *"With regards to the authority to issue shares without preemptive rights, we generally view proposals to suspend preemptive rights for a maximum of 10% of the issued ordinary share capital of the company as non-contentious and routine, in line with the recently updated recommendations of the Pre-emption Group. Further, we believe that this authority should be limited to 15 months.*

However, we consider authorities requesting up to 20% of current issued share capital reasonable when the board provides an assurance that the portion of the authority in excess of 10% of the company's issued share capital will be limited to use in connection with an acquisition or specified capital investment, in line with the recommendations of the Pre-emption Group.

Further, we are generally supportive of proposals where an additional 2% of current issued share capital is requested for the purposes of follow-on issuances, as defined by the Pre-emption Group, under either, or both, of the 10% limits. We note that such an authority is currently limited, in practice, by the requirements imposed by the UK prospectus regime."

Continental Europe

Meanwhile, Glass Lewis' Continental Europe policy guidelines state *"When a company seeks shareholder approval of a specific issuance of shares without preemptive rights that exceeds applicable recommended limits,* [*20% of issued share capital, except for France (10% without a binding priority subscription period) and the Netherlands (10%).*] *we will examine the proposal on a case-by-case basis to weigh the merits of the proposed plan against the dilutive effect to shareholders from the proposed share issuance."*

---

[7] https://www.issgovernance.com/file/policy/latest/emea/UK-and-Ireland-Voting-Guidelines.pdf
[8] https://www.issgovernance.com/file/policy/latest/emea/Europe-Voting-Guidelines.pdf
[9] https://www.glasslewis.com/voting-policies-current/

7. Georgeson Investor Survey: How investors are approaching (10%+10%) share issuance votes

Although some of the largest stakeholders have welcomed the recommendations put forward in the Review, how institutional shareholders will vote on new 10%+10% share issuance resolutions is still uncertain. Georgeson has leveraged its strong relationships with investors to conduct a survey on how resolutions seeking the authority to issue shares up to 20% of ISC will be viewed in 2023.

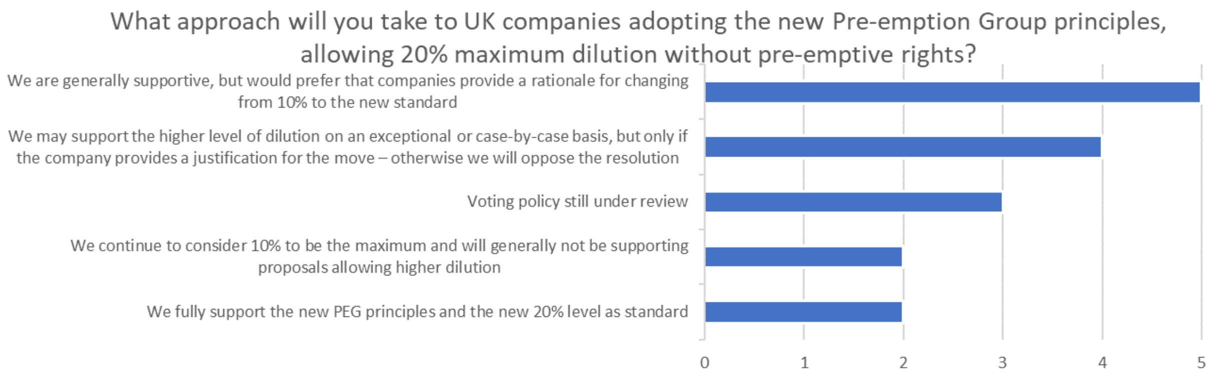
There is also the question of how this change to the PEG's Statement of Principles will affect shareholders' voting behaviour for companies outside of the UK. Most institutional shareholders, along with the major proxy advisors, apply a 10% limit to the amount of shares a company should be authorised to issue without pre-emptive rights across Europe. If shareholders take the view moving forward that UK-listed companies should be authorised to issue 20% of ISC without subscription rights, will they continue to apply the lower threshold for non-UK-listed companies? Is there a compelling rationale for adopting that approach?

Portfolio Managers as well as heads of governance and stewardship at over a dozen of the world's biggest asset managers weighed in on our survey about the changes to the Pre-Emption Group's policy towards issuing shares without pre-emptive rights. Specifically, they were asked:

1. **What approach will you take to UK companies adopting the new Pre-emption Group principles, allowing 20% maximum dilution without pre-emptive rights?**
    - A. We fully support the new PEG principles and the new 20% level as standard;
    - B. We are generally supportive, but would prefer that companies provide a rationale for changing from 10% to the new standard;
    - C. We may support the higher level of dilution on an exceptional or case-by-case basis, but only if the company provides a justification for the move – otherwise we will oppose the resolution;
    - D. We continue to consider 10% to be the maximum and will generally not be supporting proposals allowing higher dilution.
    - E. We have a more conservative limit below 10% across UK/Europe
2. **What approach will you take in Continental Europe?**
    - A. Our approach is unchanged and a maximum dilution of 10% is allowed in countries where this is standard practice or recommended by the local Code;
    - B. Our approach will be more flexible and allow to converge toward a 20% dilution limit over time;

In total, 16 investors replied to our survey. Their responses provided the following insights:

With regards to their approaches to UK-listed companies seeking the authority to issue shares up to 20% of ISC without pre-emptive rights:



- **Fourteen** investors provided anecdotal commentary on the process they are undertaking to review and update their guidelines in relation to share issuance.
- Only **Rathbone Investments** confirmed they will formally adopt the new guidelines.
- **Janus Henderson, M&G Investments, Aviva Investors, Columbia Threadneedle** and **Federated Hermes** informed us they are likely to adopt the updated pre-emption group guidance.
- Only **Allianz Global Investors** and **UBS GAM** so far confirmed they will still apply the 10% rule in UK however they are likely to review exceptional situations on a case-by-case basis.
- Many reiterated the importance of aligning with PEG guidance and any deviation is very likely to result in opposing the issuance requests.
- The general investor sentiment is that companies seeking to apply the maximum request should take a cautious approach, in particular large-cap companies.

In relation to how these changes will affect their view of share issuance authorities in Continental Europe:

- Many investors were unwilling to compare their approaches to UK-listed companies with companies from Continental Europe at this stage, referring instead to their existing policies that will guide their voting decisions. In fact, some investors indicated that questions such as the one included in the survey serve as a good reminder that they might need to re-visit their approach to certain European markets, in particular France and Germany.
- For now, some investors informed us that their policy will not change and remain at 10% without pre-emptive, others said that if they are to revise their policy for the UK, they will apply a similar approach for European companies.
- Notably Blackrock and Vanguard reiterated that their policy in relation to European companies is not in line with general market practices as they allow for 20% without pre-emptive rights and across the continent and will continue to do so.

8. Mark Austin argues why the new PEG guidance should receive investor support

The following is a note shared with Georgeson by Freshfields Bruckhaus Deringer lawyer Mark Austin[10], the independent chair of the UK Secondary Capital Raising Review:

"The Pre-Emption Group (PEG), which publishes guidance on the disapplication of pre-emption rights in the UK and monitors how it is applied, has recently updated its Statement of Principles. The amendments have been made to reflect the recommendations in this area made by the HM Treasury's UK Secondary Capital Raising Review, which consulted widely with investors in reaching its conclusions.

The Statement of Principles now supports resolutions to disapply pre-emption rights for up to 20% of existing share capital in any one year, on a 10% + 10% basis. When granted, these authorities allow the proceeds of a non-pre-emptive offer of up to 10% of existing share capital to be used for any purpose, with the proceeds of a further 10% available for use only in connection with an acquisition or specified capital investment that is announced with the issue or which has taken place in the previous 12 months.

Outlined below are points that investors may find helpful in supporting a decision to follow the updated PEG guidance and vote in favour of 10% + 10% resolutions put forward by UK companies. ISS and Glass Lewis have already confirmed that they support the revised guidance.

> **Use of proceeds limitation:** In contrast to other major jurisdictions, the UK PEG guidance contains a restriction on the use of proceeds of a non-pre-emptive offer above a certain size. While the proceeds of the first 10% of new shares is available for use for any purpose, a level that aligns with usual non-pre-emptive offer size in other major European jurisdictions (for example, Germany and the Netherlands), use of the proceeds of the additional 10% is limited to funding an immediate or recent acquisition or specified capital investment (as defined in the Statement of Principles). As noted by the PEG, the greater freedom to execute non-pre-emptive issues of equity securities in connection with an acquisition or specified capital investment is intended to allow companies the opportunity to finance expansion opportunities as and when they arise. This use of proceeds feature can provide a degree of comfort to shareholders around the future utilisation of extended authorities.

> **Wall-crossing:** In addition, the 10% + 10% limit is just an authorisation that can in theory be used in the following year, not a guarantee that it will be. In practice, issuers will assess what quantum of proceeds they need to raise and the percentage that represents. And will then wall-cross key existing investors to ensure that they are supportive of the quantum and the use of proceeds. If investors are not, it is unlikely that a placing would proceed.

> **Conditions to a specific issue under a general disapplication:** The 10% + 10% resolutions provide a general disapplication of pre-emption rights, meaning a company can make an issue up to the relevant threshold without the need to reconvene a formal shareholder meeting. This is a significant advantage for companies seeking to recapitalise quickly. There is, however, an expectation in the new PEG guidance that companies will meet a number of conditions when a specific issue is contemplated under a general authority, and these conditions can provide further comfort to investors.

Amongst other factors, the company is expected, broadly, to consult in advance with its key shareholders, issue the new shares on a soft pre-emptive basis and give due consideration to the inclusion of retail investors not included in the soft-pre-emptive process. As well as for management to be involved in allocation decisions. The conditions on soft pre-emption and retail

[10] https://www.freshfields.com/en-gb/contacts/find-a-lawyer/a/austin-mark/

involvement ensure there is a market expectation that the interests of existing shareholders remain a management priority. While it is always difficult to draw direct comparisons between markets with different legal and regulatory requirements, investor guidance and established market practices, the wider inclusion of existing shareholders is a factor that increases the usual size of non-pre-emptive offers in France for example (investor guidance supports 10%, rising to 20% where a non-pre-emptive offer includes a priority right for existing shareholders).

> **Post-transaction reporting:** A further element of the new PEG guidance is the expectation of greater transparency after completion of a non-pre-emptive issue, with standardised public disclosure required by the issuer that will confirm compliance with the new PEG conditions. The post-transaction report should include details of the transaction, the use of proceeds, quantum of proceeds (on a gross and net basis), discount, allocations (including on any allocations made other than on a soft pre-emptive basis), confirmation of appropriate consultation with major shareholders and details of how due consideration was given to the interests and involvement of retail investors not allocated shares in the soft pre-emptive process. This transparency is expected both to ensure consideration of existing shareholders retains management focus at the point an issue is made – as the public reporting will being into play the director liability framework in the UK - and to provide investors with useful information on how past authorities have been used when deciding whether or not to approve any requested disapplication authorities for the following year."

For more information please contact:

Nicholas Laugier
Business Development Director
nicholas.laugier1@georgeson.com
T: +44 (0)207 019 7004
M: +44 (0)7812 383 687

Kiran Vasantham
Head of Investor Engagement UK/Europe
kiran.vasantham1@georgeson.com
T: +44 (0)20 7019 7000
M: +44 (0) 7977 037 300

Daniele Vitale
Head of ESG, UK & Europe
daniele.vitale@georgeson.com
T: +44 (0)20 7019 7034
M: +44 (0)77 4769 7136

Daniel Veazey
Corporate Governance Manager
daniel.veazey@georgeson.com
T: +44 (0)20 7030 300
M: +44 (0)79 7410 4287

Sunny Malhi
Corporate Governance Analyst
sunny.malhi@georgeson.com
T: +44 (0)20 703 0300
M: +44 (0)7977 054 646

Kevin O'Neill
Corporate Governance Analyst
kevin.oneill@georgeson.com
T: +44 (0)20 7019 7000
M: +44 (0)3707 030 300

CONFIDENTIALITY
This memo has been prepared by Georgeson for specific in-house use. Both parties shall keep this report confidential and neither this report nor copies nor extracts thereof shall be provided to any other party without the prior approval of Georgeson.

DISCLAIMER
While all information in this report/analysis has been obtained from sources considered to be reliable, Georgeson and its employees do not warrant the complete accuracy of the information. Save for statutory liability which cannot be excluded, Georgeson further disclaim all responsibility for any loss or damage which may be suffered by any person relying upon such information.