EQUITY RAISINGS BY UK PLCS IN COVID-19 TIMES

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ADDLESHAW GODDARD

INTRODUCTION

The coronavirus has had a huge impact on wide swathes of the economy in the UK and abroad. UK listed PLCs have not been insulated from the economic damage caused by COVID-19 with, amongst other things, share prices in the majority of UK listed businesses declining to levels not seen in many years. Whilst, generally, the virus has impacted listed companies, big and small, and across all industry sectors, the impact has been felt differently by different companies, with many finding that they are still able to present their businesses in a positive light and access equity capital markets as a useful funding line through difficult and unprecedented times.

Addleshaw Goddard LLP has advised on 8 equity raisings by UK PLCs in the last 8 weeks with more transactions currently in the pipeline. In this article, Giles Distin, capital markets partner at Addleshaw Goddard, explores some of the features of current UK PLC equity raisings.

"SINCE MID-MARCH OVER £7BN OF NEW MONEY HAS BEEN RAISED BY UK LISTED PLCS

WHAT ARE RECENT AND CURRENT LEVELS OF ACTIVITY LIKE IN RELATION TO PLC EQUITY RAISINGS?

Since the UK's COVID-19 lock-down was initiated in mid-March, over £7bn of new money has been raised by UK listed PLCs[1]. The majority, but not all, of equity raising transactions announced since mid-March have involved small and midcap listed PLCs, perhaps in some ways reflecting the more extreme working capital impact of the crisis felt by listed SMEs. This has been the busiest, non-IPO related, equity fundraising period for UK PLCs in many years, with c.50 secondary offering transactions (where at least £10m was raised) having been announced since 20 March 2020, and significantly more than 100 transactions in all.

Which industry sectors have been popular for recent equity raisings?

The majority of the first wave of equity raisings involved companies from the retail, consumer and leisure sectors – perhaps again reflecting the deeper and most immediate impact from the lock-down felt by such companies.

Secondary offering activity has, however, now spread across several industry sectors. This activity level probably hasn't been experienced so keenly by certain technology and other largely web-based businesses, which have proved more robust in lock-down times, and the real estate, financial services and support services sectors (amongst several others) haven't, as yet, seen significant widespread levels of activity. That is not to say, however, that an increase of activity in such sectors won't follow.

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THE FIRST WAVE OF EQUITY RAISINGS INVOLVED COMPANIES FROM THE RETAIL, CONSUMER AND LEISURE SECTORS

[1] This will be over £8bn, assuming the successful completion of Whitbread plc's £1bn rights issue

WHAT IS DRIVING THIS ACTIVITY?

Quite obviously lock-down measures and other repercussions from the COVID-19 crisis have encouraged businesses to raise funds. This could be for a variety of reasons.

Certain businesses – for example, those that are earning (and may continue to earn over the coming months) no or very little revenue whilst some form of lock-down or social distancing measures are in place – could be experiencing extreme pressure on working capital positions and need to raise money quickly.

Other issuers, where they can, may prefer to access equity as a quick alternative to trying to access debt (which may or may not be available to borrowers). In certain cases (see below), equity raisings may be staged alongside the putting in place of new or amended bank facilities and/or the re-setting of financial covenants with lenders. As regards the availability of debt in the UK market, whilst the position varies from lender to lender and depending on the particular position of the borrower, generally teams within banks are currently extremely busy concentrating on managing existing loan positions, many of which are suffering in crisis times, rather than widely extending further credit to listed businesses.

For many companies, there may be no pressing need right now to raise equity. Where companies have unutilised share issuance authorities (see below), however, they may be encouraged to raise funds quickly and simply now, knowing that the equity markets are currently open, in case the impact of the crisis continues to be felt for an extended period and funds are needed for a "rainy day". There will also be certain issuers raising money who hope that they will emerge from the crisis stronger than their competitors and embark on an acquisition trail.

> **"POTENTIAL TO EMERGE STRONGER THAN COMPETITORS AND EMBARK ON AN ACQUISITION TRAIL**

WHAT STRUCTURES ARE CURRENTLY BEING USED BY PLCS TO RAISE EQUITY?

A variety of structures are being used, although a common theme is that the vast majority of recent equity issuances have been very largely non pre-emptive – i.e. not involving a retail offering and not being made pro rata to a company's existing shareholder basis. So rights issues or open offers have not been a significant feature of recent fundraisings.[2] The vast majority have been by way of accelerated bookbuild ("ABB") placings with institutional investors.[3]

More recently – and arguably partly as a result of the various City bodies publishing supportive guidance in relation to larger non-pre-emptive issuances[4] in these extraordinary times – "cash box" placings have gained popularity. These had been common several years back but, partly as a result of UK investor committee guidelines looking less favourably on such structures, had fallen out of popularity. Now cash box placings have come back into vogue.[5]

This structure (which is not significantly more complex than a "regular" placing) involves the incorporation of a new (usually Jersey registered) company, jointly owned by the issuer and the bookrunner, and the shares issued by the issuer in the placing are issued in consideration for the transfer of shares (i.e. they are not issued "for cash") in the JerseyCo (which itself will come to hold the cash proceeds of the placing)[6].

The structure legitimately avoids pre-emption restrictions in the UK Companies Act 2006 (which attach to issuances for cash). Cash box structures usually allow for larger non pre-emptive placings and have recently been used up to the level of 19.9% of existing share capital of an issuer (20% being the limit beyond which, for Main Market listed issuers, a prospectus would usually need to be published by an issuer in connection with the fundraising).

"CASH BOX PLACINGS HAVE COME BACK INTO VOGUE

2. Out of the c.50 secondary offerings (at above a £10m fundraise) reviewed at the time of this article, only 7 included an open offer or rights issue. For one example, see the placing by The City Pub Group plc, on which Addleshaw Goddard advised and to which an open offer was attached

3. See, for example, the placings by Ten Entertainment Group plc, Eurocell plc, essensys plc, genedrive plc and boohoo group plc on which Addleshaw Goddard has advised

4. See the statement issued by the Pre-Emption Group (https://www.frc.org.uk/getattachment/9d158c89-f0d3-4afe-b360-8fafa22d2b6a/200401-PEG-STATEMENT.pdf) which has gained support from the Financial Conduct Authority (https://www.fca.org.uk/news/statements/listed-companies-recapitalisation-issuances-coronavirus) and the Association for Financial Markets in Europe (AFME) (https://www.afme.eu/news/press-releases/AFME-welcomes-temporary-relaxation-of-pre-emption-rights-for-share-issuance-)

5. See, for example, the cash box placings for Scapa Group plc and On the Beach Group plc, on which Addleshaw Goddard has advised. Out of the c.50 secondary offerings (at above a £10m fundraise) reviewed at the time of this article, 21 transactions were by way of cash box placings

6. See the diagram on the next page which explains the cash box structure

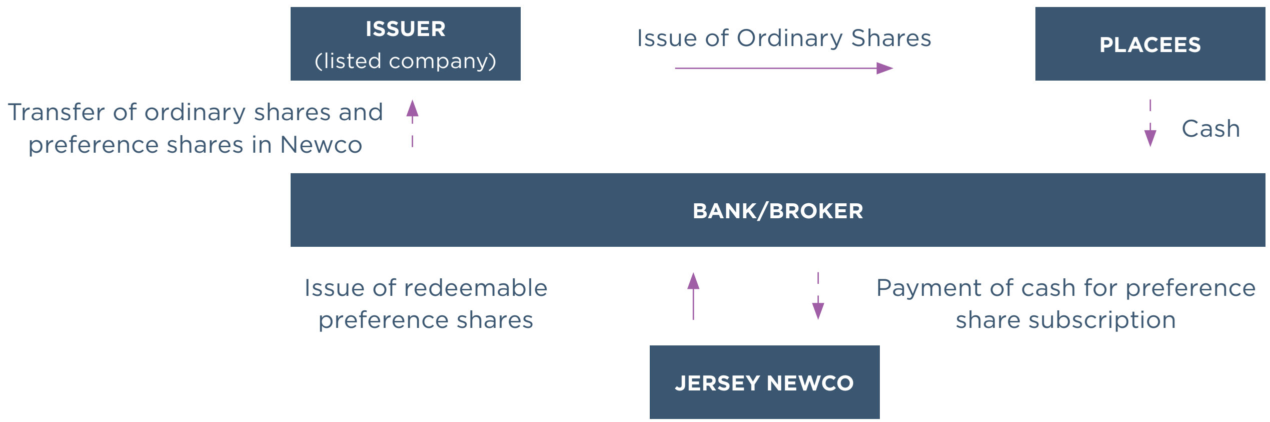
WHAT STRUCTURES ARE CURRENTLY BEING USED BY PLCS TO RAISE EQUITY? (CONT.)

If kept below a certain percentage issuance level, non pre-emptive placings within existing unutilised shareholder authorities can be undertaken without the need to seek further shareholder approval (and without the need for a cash box structure), which can save time, cost and the headache of holding a shareholder meeting (particularly in lock-down times).

Even through a cash box structure, a UK incorporated company will still be prevented, however, from issuing shares in excess of its annual general share allotment authority limit (even if such limit is set high) – in such cases an issuer will need to revert to its shareholders for approval for further share issuance.

Certain companies who are seeking to undertake significant non pre-emptive fundraisings are not using cash box structures (even if several Main Market companies have done so over the last few weeks) and are reverting to shareholders for approval.

A TYPICAL CASH BOX STRUCTURE



WHAT ARE THE ADVANTAGES AND DISADVANTAGES OF NON PRE-EMPTIVE OFFERINGS?

As above, if a non pre-emptive offering can be conducted within existing unutilised shareholder authorities (or a cash box structure can be used to avoid non pre-emptive limits within shareholder authorities), a company can usually avoid the cost, time and administrative effort in publishing a shareholder circular (or FCA approved prospectus) and holding a shareholder meeting.

Such transactions can, with a fair wind, be completed within approximately a week to ten days of starting the fundraising exercise. If working capital constraints are extreme, this structure can be a real advantage.

Fundraisings can be conducted on the back of very limited investor information – e.g. an institutional investor presentation slide deck or, simply, a relatively short announcement (or announcements). Not holding a shareholder meeting to approve a fundraising (and avoiding the 14 plus clear days' notice period required to hold such meeting) can also avoid the risk of a negative development occurring before the fundraising completes, which development could place the fundraising in jeopardy and stop it completing.

Such events may be unlikely to arise in "normal" times – but in COVID-19 times, are perhaps not so unlikely (see below re termination rights). Raising money through a non pre-emptive offering can also be an attractive alternative to further leveraging a business, even if debt may be available. Existing institutional/significant shareholders, if given the opportunity to re-invest in placings (as bookrunners would often advise) have commonly been supportive over recent weeks of fundraising activity.

This does not mean that new investors should be excluded from such placings but existing institutional shareholder support, together with an issuer actively participating in the stock allocation process by bookrunners, would form part of the "soft pre-emption" process that the market is currently expecting in relation to significant non pre-emptive raisings.

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A "SOFT PRE-EMPTION" PROCESS IS EXPECTED IN RELATION TO NON PRE-EMPTIVE RAISINGS

WHAT ARE THE ADVANTAGES AND DISADVANTAGES OF NON PRE-EMPTIVE OFFERINGS? (CONT.)

The disadvantages of a non pre-emptive fundraising structure include the risk of alienating certain (sometimes, many) shareholders who are not given the opportunity to participate and who, therefore, see their percentage shareholding diluted. Many of such shareholders will inevitably be retail shareholders – who might constitute an important proportion of a company's shareholder base (although perhaps less so in many small and midcap listed companies).

Such dilution might be more extreme where shares are being subscribed against a backdrop of historically low prices. Public commentary in relation to recent non pre-emptive offerings excluding retail investors has been notable although not overwhelming[7].

As companies move further through these crisis times, however, it is likely that pre-emptive offering structures (such as open offers and rights issues) will become more common. Such structures require a longer lead time to put in place and will often require the issuance of an FCA approved prospectus. The FCA has signalled that in these extraordinary times, certain rules and standards normally applied to prospectuses may be flexed[8].

The recent and more significant emergence of *PrimaryBid*[9] – which platform allows retail investors (although not necessarily existing investors) to more easily participate alongside a placing – is a notable recent development, even if *PrimaryBid* has been in existence for several years. The "bolt-on" placing structure provided by *PrimaryBid* does not require an open offer or similar structure and, if properly planned, should not delay the timetable for a placing.

7. The FCA has, however, recently commented (in its Primary Market Bulletin Issue No. 28 coronavirus (Covid-19) update): "issuers with a large number of smaller shareholders could consider if there are routes that may be available to make participation in a capital raising available to those shareholders. We recognise that it may not be possible to achieve this in all cases due to time pressures for the issuer or legal risks. It is for the issuer to decide whether to undertake a capital raising in this way."

8. See: https://www.fca.org.uk/news/statements/listed-companies-recapitalisation-issuances-coronavirus and https://www.fca.org.uk/publication/primary-market/modification-general-meeting-technical-supplement.pdf

9. See, for example, *PrimaryBid*'s recent involvement in the £2bn equity raising by Compass Group plc

COMPANIES ARE ABLE TO SUCCESSFULLY RAISE MONEY IN THE CURRENT MARKET. HOW?

There is no clear answer to these questions. Whilst fundraising activity is clearly now also moving into sectors outside of retail, consumer and leisure, industry sectors aside, the precise circumstances of the issuer and its business will be all-important. A common feature of these equity raisings has been that issuers need to have fully and intelligently analysed the impact of COVID-19 on their business, have taken all of the steps they can reasonably take to mitigate impacts, have announced in a timely fashion the impact and mitigation steps taken, and have a keen sense of what the funds to be raised will be used for.

Particular areas will come into focus including: the cost-cutting measures taken with an emphasis often around employees, real estate and material contractual arrangements; the availability of up-to-date and accurate financial information to present to investors; the issuer's current position with its lending bank(s), including whether formal or informal waivers of, or re-setting of, financial covenants have been obtained. Sometimes formal debt refinancing or amendments to existing facility arrangements may be required at the same time as the equity raising, the synchronising of which will need to be carefully managed[10].

“A PARTICULAR AREA OF FOCUS WILL BE THE ISSUER'S CURRENT POSITION WITH ITS LENDING BANK(S)

10. See, for example, the cash box placings for Scapa Group plc and On the Beach Group plc, on which Addleshaw Goddard has advised

WHAT WILL THE FUNDRAISING EXERCISE COST?

Costs vary significantly, depending on, amongst other factors, the equity funding structure used, the amounts looking to be raised and how difficult or easy bookrunners believe it will be to raise the required funds. Commission rates and corporate finance fees charged by bookrunners do not, on the whole, appear to have changed in any material fashion from before the COVID-19 crisis began, with a range of commissions being charged across the market. Cash box placings will make the exercise only marginally more expensive compared to a “regular” placing from a legal advisory perspective. It is now common in non pre-emptive equity raisings for midcap bookrunners to seek to privately place some shares with a small number of qualified institutional buyers (“QIBs”) in the United States – and several of the recent offerings have been popular with QIBs. Depending on whether applicable US securities law exemptions are available to issuers, restricted private placement offerings into the US may often add only a modest amount to legal costs.

What discount to current market trading prices might be expected at the moment for equity raisings?

It is impossible to generalise, with different industry sectors, different businesses (with different financial and trading positions), different investor bases, the timing of when a fundraising is executed and the fundraising structure used[11], amongst many other factors, all influencing pricing. So far, despite the already extreme downward impact of the crisis on most PLC share prices, the vast majority of placings have been launched at a discount to current trading prices (even if there are a few examples of a premium being paid), with discounts generally ranging from 1.5% to around 10% (or sometimes slightly more).

[11] For example, for an equity raising involving a rights issue, a much more significant discount might be expected

HOW CERTAIN ARE EQUITY RAISINGS TO COMPLETE ONCE ANNOUNCED?

The current consensus answer would be: very. However, particularly in COVID-19 times, nothing is impossible. For many years, the ability for bookrunners to terminate a placing (the termination rights being found in the placing (or underwriting) agreement) has been significantly wide and includes, amongst other things (a) a very broad range of circumstances which would be deemed a material adverse change in the condition of the issuer and its group and (b) a wide range of events of force majeure.

The standard circumstances when a force majeure termination right may in theory be exercised do not appear to have changed in any significant respect since COVID-19, but that is partly because such rights were already widely drawn before the crisis. From past practice, it would be thought of as incredibly rare for bookrunners to exercise these rights – although in crisis times, one could not promise that the very rare exception would not materialise.

As above, partly because of the very unpredictable nature of what may happen next as a result of COVID-19, issuers have favoured the very short completion timetable that a non pre-emptive placing exercise would often allow – under which the listing of new shares can happen within 3 business days after the placing agreement is signed and the placing is announced to the market. This keeps the period during which termination rights could be exercised extremely short.

It is worth noting (and this has been the case for many years in particular in the small and midcap UK PLC market place) that many bookrunners may not, on occasion, be prepared to underwrite the legally binding commitments of the placees that they have procured in a fundraising.

Historically, again, this has not been thought to be a risk of any significance whatsoever – it would be incredibly rare for institutional placees to default on the commitments they have given. Again, perhaps that risk (or, at least, the perception of risk) changes slightly in COVID-19 times – but there is no evidence to show that institutional investors will seek to back out of the commitments given. In any event, again issuers would probably enjoy the comfort of knowing that the timetable for completing a non pre-emptive placing, following announcement, will be short.

CONCLUSIONS

Many UK listed PLCs will have had, or will currently have, equity raising plans on the agenda – and fundraising activity by their competitors, and other listed businesses, will have made a number interested in seeing what the possibilities are. If you need advice on the equity raising process, or on the different equity raising structures that may be available to you as an issuer, please contact us. We'd be happy to assist.

SOME RECENT UK EQUITY RAISINGS ON WHICH WE HAVE ADVISED

THE CITY PUB GROUP PLC

£15m placing and £7m open offer
Advising The City Pub Group

TEN ENTERTAINMENT GROUP PLC

£5m placing
Advising Peel Hunt, as sole bookrunner

EUROCELL PLC

£18m placing
Advising Peel Hunt, as sole bookrunner

ESSENSYS PLC

£7m placing
Advising Nplus1 Singer, as sole bookrunner

GENEDRIVE PLC

£7m placing and £1m broker option Advising genedrive

SCAPA GROUP PLC

£33m cash box placing
Advising Scapa Group

BOOHOO GROUP PLC

£198m placing Advising Zeus Capital and Jefferies as joint global coordinators and joint bookrunners

ON THE BEACH GROUP PLC

£67m cash box placing
Advising On the Beach Group

PROBLEMS. POSSIBILITIES.
COMPLEXITY. CLARITY.
OBSTACLES. OPPORTUNITIES.
THE DIFFERENCE IS IMAGINATION.
THE DIFFERENCE IS AG.

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