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COVID-19 Updates for UK + European Capital Markets: FCA, FRC + PRA Joint Statement, AIM Guidance and ESMA Public Statement

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In light of the COVID-19 pandemic, several key updates for UK and European capital markets have recently been released, focusing primarily on financial reporting, including a joint statement by the Financial Conduct Authority (FCA), Financial Reporting Council (FRC) and Prudential Regulation Authority (PRA), an Inside AIM publication by the London Stock Exchange (LSE) and a public statement from the European Securities and Markets Authority (ESMA).

UK FCA, FRC and PRA joint statement

A series of temporary actions were announced by the FCA, FRC and PRA on 26 March to ensure that information continues to flow to investors and to support the continued functioning of the UK's capital markets.

Reporting timetable for listed companies

The FCA will allow listed companies an additional two months to publish their audited annual financial reports, a delay from the usual four months from the financial year-end to six months from the financial year-end. The FCA is effecting this by: (i) stating that they do not expect issuers to request a suspension and they will not take any steps to suspend the listing for breach of DTR 4.1.3R where an issuer fails to publish their annual financial reports within four months of their financial year-end, provided that they are published within six months of the financial year-end; and (ii) stating that issuers will not face enforcement action for breach of DTR 4.1.3R provided that they publish their results within six months of their financial year-end. This is consistent with the approach outlined by ESMA (see below under "ESMA public statement").

This policy is intended to be temporary while the UK faces the extreme disruption of the COVID-19 pandemic and its aftermath and the FCA will keep its application under review. When the disruption abates, the FCA will consider how best to end the policy in a fair, orderly and transparent way.

Investors will still receive timely information on which to base their decisions as companies will still need to observe their other disclosure obligations, in particular those concerning inside information under the Market Abuse Regulation, recognising that the global pandemic and policy responses to it may alter the nature of information that is material to business prospects.

The FCA, FRC and PRA recognise that some companies, given the nature of their operations, may feel it appropriate to maintain the four-month calendar, but would urge all those companies that feel it appropriate to utilise the additional two months to do so. They also urge market participants not to draw undue adverse inferences when companies make use of the extra time the temporary relief gives them, and note that for a great many companies it will be a sensible decision to make in unprecedented times. The FCA, FRC and PRA strongly recommend that all listed companies review all elements of their timetables for publication of financial information in order to make appropriate use of the time available within regulatory deadlines to ensure accurate and carefully prepared disclosures.

The FCA confirmed that the **moratorium on preliminary financial statements** would end on 5 April. The FCA noted that it still believes the practice of issuing financial statements earlier than required will add unnecessarily to the pressure on companies and the audit profession at the present time. However, the FCA believes that pressure can abate as companies react to the need to re-think and re-plan financial calendars in light of the COVID-19 pandemic and the package of measures being announced by the FCA, FRC and PRA.

Further measures to allow companies and auditors to focus on the delivery of information to investors and the capital markets include:

- **Delaying the filing of accounts by companies**: UK Companies House will permit a three-month delay to filing of accounts. While companies will have to apply for the extension to be granted, those citing COVID-19 related issues will be fast-tracked to automatically and immediately be granted the extra time. For example, this will permit applications for delayed filing of financial statements for subsidiary companies of listed entities.
- **Postponement of audit tenders:** Companies are encouraged to consider delaying planned tenders for new auditors, even when a mandatory rotation is due. The FRC has a power in law to extend certain mandates, where the initial appointment commenced after 17 June 1994, by up to two years in exceptional circumstances.
- **Postponement of audit partner rotation**: Key audit partners are required to rotate every five years. However, where there are good reasons, for example to maintain audit quality in current circumstances, the rotation can be extended to no more than seven years. This needs to be agreed with the audit committee of any affected entity and does not need to be cleared with or approved by the FRC.
- **Reduction of FRC demands on companies and audit firms**: the FRC will, where possible, delay or extend the deadlines for consultations; it has paused for at least one month writing new letters to companies following its review of their annual reports and accounts. It is considering how it can adjust it audit quality review work to reduce demands on audit firms, and it will pause for at least one month requests to firms on supervisory initiatives, such as operational separation of audit practices.

FRC and PRA guidance

The FRC notes that many companies preparing financial statements are facing unprecedented uncertainty about their immediate prospects in an environment that may challenge or disrupt their usual management and governance processes. To maintain effective decision making in the interests of the company, their workforce and other business partners, the FRC encourages boards to:

- Develop and implement mitigating actions and processes to ensure that they continue to operate an effective control environment; in particular, addressing any key reporting and other controls which have historically been relied on but may not be effective in the current environment
- Consider how they will secure reliable and relevant information, on a continuing basis, in order to manage future operations (and those of their workforce and suppliers) including financial information flows from subsidiaries, joint venture and associate group entities
- Pay attention to capital maintenance and ensure sufficient reserves are available when the dividend is made and not just when proposed

The FRC has prepared guidance for companies intended to help them make **key forward-looking judgements** as consistently as possible. This is complemented by guidance from the PRA regarding approaches for banks, building societies and PRA-designated investments firms in **assessing expected loss provisions under IFRS9**.

Significantly, the PRA has also provide guidance for lenders to responding to covenant breaches related to COVID-19. The PRA expects lenders to consider the need to treat covenant breaches that arise from COVID-19 related matters that are of a general nature, or are firm specific, but unrelated to the solvency or liquidity of the borrower differently compared to uncertainties that arise because of borrower-specific issues and in doing so consider waiving the relevant covenant breach. The PRA would expect firms to do so in good faith and not to impose new charges or restrictions on customers following a covenant breach that are unrelated to the facts and circumstances that led to that breach.

FRC guidance for auditors

Guidance for auditors has been provided by the FRC for audit firms seeking to **overcome challenges in obtaining audit evidence**. In their bulletin, the FRC stated that unless a relevant disclaimer or qualification applies, auditors must obtain sufficient, appropriate audit evidence and that even in challenging times, independently assured information is critical to support capital markets. A non-exhaustive list of factors and corresponding guidance for auditors to consider when carrying out audit engagements is provided. Areas include materiality, audit confirmations, going concern, group audits, quality control, modified opinions, misstatements, ethical matters and more.

LSE publication of Inside AIM

Temporary measures for deadline extensions to annual audited accounts have been published by the LSE in an edition of Inside AIM dated 26 March.

Currently, under the AIM Rules for Companies, an AIM company has six months after the end of its financial year to publish its annual audited accounts. This reporting requirement is consistent with the legal filing deadline for UK incorporated public company under the Companies Act 2006. The LSE notes that UK companies can apply to Companies House for a three-month extension of the legal filing deadline noted above under “Reporting timetable for listed companies”.

In light of this, the LSE has announced a temporary measure, effective from 26 March, allowing AIM companies to apply to AIM Regulation for a three-month extension to the reporting deadline for the publication of its annual audited accounts pursuant to AIM Rule 19. Any request must be made to AIM Regulation by the company’s nominated advisor prior to the company’s current AIM Rules reporting deadline. This extension is available for AIM companies with financial year-ends between 30 September 2019 and 30 June 2020.

The LSE will keep reviewing the operation of the AIM Rules and, in particular, AIM Rule 18 requirements for half yearly reports.

ESMA public statement

On 27 March, ESMA issued a public statement regarding actions to mitigate the impact of COVID-19 on the EU financial markets regarding publication deadlines under the Transparency Directive. As a reminder, the Transparency Directive requires issuers with securities admitted to trading on a regulated market to publish an annual financial report at the latest four months after the end of each financial year and a half-yearly financial report at the latest within three months from the end of the half-year.

ESMA issued the statement to promote coordinated action by national competent authorities (NCAs) regarding issuers’ obligations to publish periodic financial information for reporting periods ending on 31 December 2019 or after in the content of the COVID-19 outbreak.

ESMA, in coordination with NCAs, and considering that issuers may be prevented from fulfilling the requirements due to COVID-19, expects NCAs during this specific period not to prioritise supervisory actions against issuers in respect of the upcoming deadlines set out in the Transparency Directive regarding:

- Annual financial reports referring to a year-end occurring on or after 31 December 2019 but before 1 April 2020 for a period of two months following the Transparency Directive deadline (which is four months from the end of the financial year)

- Half yearly financial reports referring to a reporting period ending on or after 31 December 2019 but before 1 April 2020 for a period of one month following the Transparency Directive deadline (which is three months from the end of the half-year)

ESMA encourages NCAs to generally apply a risk-based approach in the exercise of supervisory powers in their day-to-day enforcement of applicable legislation in this area. Nevertheless, where issuers reasonably anticipate that publication of their financial reports will be delayed beyond the deadline set out in national laws transposing the Transparency Directive, they are expected to inform their NCAs of this and inform the market of the delay, the reasons for such delay and to the extent possible the estimated publication date.

ESMA reminds issuers that they continue to be subject to the disclosure obligations laid down in Article 17 of the Market Abuse Regulation. In particular, issuers must continue to inform the market as soon as possible of any inside information that directly concerns them.

ESMA, together with NCAs, will continue to closely monitor the situation. ESMA acknowledges that in some member states legislative changes were implemented to extend, *inter alia*, the applicable publication deadlines for financial reports and notes that their public statement will be of relevance to those jurisdictions where such legislative changes have not taken place or are not going to take place.

Finally, ESMA highlights that the actions do not mitigate possible requirements stemming from national company law.

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