

Pre-Emption Group

REPORT ON THE APPLICATION OF THE REVISED STATEMENT OF PRINCIPLES ON PRE-EMPTION RIGHTS OCTOBER 2007 - SEPTEMBER 2008

Introduction

1. Pre-emption rights give existing shareholders in a company the right to subscribe for their pro rata share of any new shares in that company issued for cash, providing them with protection against inappropriate dilution of their investments. Pre-emption rights are enshrined in UK and EU company law and may be disapplied only by a special resolution of shareholders at a general meeting of the company. The Pre-Emption Guidelines were originally published in 1987 to provide guidance on disapplying pre-emption rights.
2. A review of the impact of pre-emption rights in 2004, carried out by Paul Myners on behalf of the then Department of Trade and Industry, recommended that the guidelines be updated to reflect developments in the market since 1987. As a result the Pre-Emption Group – whose members represent listed companies, investors and intermediaries – was reconvened and a new Statement of Principles was published in May 2006. A revised edition of the Statement of Principles was published in July 2008.
3. The Statement of Principles aims to provide clarity on the circumstances in which flexibility might be appropriate and the factors to be taken into account when considering the case for disapplying pre-emption rights and making use of an agreed authority for a non-pre-emptive share issue.
4. When publishing the Statement of Principles the Pre-Emption Group undertook to issue regular reports on how it was being applied. This report looks at the implementation of the Statement of Principles for the period from October 2007 to September 2008.

Application of the Principles

5. The Pre-Emption Group commissioned Manifest Information Services to analyse data on the use being made of requests to disapply pre-emption rights by more than 5% (5% being the level below which requests are considered to be “routine”). This data was then compared with the previous two twelve-month periods. The results of this analysis are summarised in this report.

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Note: Manifest holds data on most but not all companies listed on the Main Market, so while the data should be reasonably comprehensive it may not be complete.

Total number of requests

This table shows the total number of resolutions to disapply pre-emption rights and the sub-set of that total that sought to disapply rights for more than the equivalent of 5% of the total share value. The data shows a gradual increase in both totals, and in the number of requests to disapply more than 5% as a percentage of the overall total.

	Oct 2005 - Sept 2006	Oct 2006 - Sept 2007	Oct 2007 - Sept 2008
Total requests to disapply pre-emption rights	562	525	612
Requests to disapply more than 5%	54	64	80
Percentage of total requests seeking more than 5%	10%	12%	13%

Resolutions passed/defeated

The Group did not have access to complete data on voting outcomes for the previous two periods. Between October 2006 and September 2007 all the resolutions for which voting figures were available received at least the 75% support necessary to approve the resolution; only two were defeated in the period between October 2005 and September 2006, both of which were put forward by investment vehicles.

The Group has seen complete voting data for the last twelve months. During that period three requests were rejected, all from investment vehicles. In addition four resolutions were adjourned rather than put to the vote. All other resolutions were approved by shareholders.

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Company size/ type

Investment trusts and other equity investment vehicles accounted for over 60% of all requests in 2007-08, and have accounted for over 50% of requests in each of three periods.

There has been a slight increase in the total number of requests put forward by other companies, although there has been no increase in the number of different companies making requests. In 2007-08 four companies put forward more than one request and in total only 26 companies put forward requests (compared to 27 in 2006-07 and 21 in 2005-06).

There has been an increase in the number of requests put forward by FTSE 250 companies (although this figure is also distorted as three companies account between them for seven of the 11 requests).

Company Type	Number of requests		
	Oct 2005 - Sept 2006	Oct 2006 - Sept 2007	Oct 2007 - Sept 2008
FTSE 100	2	1	3
FTSE 250	1	4	11
FTSE Small Cap	13	18	15
FTSE Fledging	6	5	2
Equity Investment vehicles	32	36	49
Total	54	64	80
Total (excluding equity investment vehicles)	22	28	31

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Note: The remaining tables exclude equity investment vehicles

Companies by sector (excluding investment trusts)

Requests from pharmaceutical and biotechnology companies (all of which were Small Caps or Fledglings) continued to increase. No more than two companies from any other sector sought agreement to disapply more than 5%.

Only one company has sought a disapplication above 5% in each period. Six other companies have requested more than 5% in each of the last two periods; of these, five are pharmaceutical or biotechnology companies.

Sector	Number of requests		
	Oct 2005 - Sept 2006	Oct 2006 - Sept 2007	Oct 2007- Sept 2008
Pharmaceuticals & Biotechnology	5	8	10
Banks	0	0	4
Support Services	1	2	2
Media	2	1	2
Mining	1	1	2
Oil & Gas producers	0	1	2
Real Estate	0	1	2
General Retailers	1	3	1
Software & Computer Services	3	3	0
Others	9	8	6
Total	22	28	31

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AGMs vs EGMs

For the first time since monitoring began more requests were put to EGMs than to AGMs, although as with other data these figures are distorted as four companies were responsible for nine of the 18 requests put to EGMs.

Type of Meeting	Number of requests		
	Oct 2005 - Sept 2006	Oct 2006 - Sept 2007	Oct 2007 - Sept 2008
AGM	13	15	13
EGM	9	13	18
Total	22	28	31

Contacting the Pre-Emption Group

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