

## Chapter 9

# Continuing obligations

## 9.5 Transactions

### Rights issue

9.5.1

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For a placing of rights arising from a *rights issue* before the official start of dealings, a *listed company* must ensure that:

- (1) the placing relates to at least 25% of the maximum number of *equity securities* offered;
- (2) the placees are committed to take up whatever is placed with them;
- (3) the price paid by the placees does not exceed the price at which the *equity securities* which are the subject of the *rights issue* are offered by more than one half of the calculated premium over that offer price (that premium being the difference between the offer price and the theoretical ex-rights price); and
- (4) the *equity securities* which are the subject of the *rights issue* are of the same *class* as the *equity securities* already *listed*.

9.5.2

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The *FCA* may modify ■ LR 9.5.1R (1) to allow the placing to relate to less than 25% if it is satisfied that requiring at least 25% would be detrimental to the success of the issue.

9.5.3

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In a *rights issue*, the *FCA* may list the *equity securities* at the same time as they are admitted to trading in nil paid form. On the *equity securities* being paid up and the allotment becoming unconditional, the *listing* will continue without any need for a further application to list fully paid *securities*.

9.5.4

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If existing *shareholders* do not take up their rights to subscribe in a *rights issue*:

- (1) the *listed company* must ensure that the *equity securities* to which the offer relates are offered for subscription or purchase on terms that any premium obtained over the subscription or purchase price (net of expenses) is to be for the account of the holders, except that if the proceeds for an existing holder do not exceed 5.00, the proceeds may be retained for the *company's* benefit; and
- (2) the *equity securities* may be allotted or sold to underwriters, if on the expiry of the subscription period no premium (net of expenses) has been obtained.

- 9.5.5** **R** A *listed company* must ensure that for a *rights issue* the following are notified to a *RIS* as soon as possible:
- (1) the issue price and principal terms of the issue; and
  - (2) the results of the issue and, if any rights not taken up are sold, details of the sale, including the date and price per *share*.
- 9.5.6** **R** A *listed company* must ensure that the offer relating to a *rights issue* remains open for acceptance for at least 10 *business days*. For the purposes of calculating the period of 10 *business days*, the first *business day* is the date on which the offer is first open for acceptance.
- Open offers** .....
- 9.5.7** **R** A *listed company* must ensure that the timetable for an *open offer* is approved by the *RIE* on which its *equity securities* are traded.
- 9.5.7A** **R** A *listed company* must ensure that the *open offer* remains open for acceptance for at least 10 *business days*. For the purposes of calculating the period of 10 *business days*, the first *business day* is the date on which the offer is first open for acceptance.
- 9.5.8** **R** A *listed company* must ensure that in relation to communicating information on an *open offer*:
- (1) if the offer is subject to shareholder approval in general meeting the announcement must state that this is the case; and
  - (2) the *circular* dealing with the offer must not contain any statement that might be taken to imply that the offer gives the same entitlements as a *rights issue* unless it is an offer with a compensatory element.
- 9.5.8A** **R** If existing *shareholders* do not take up their rights to subscribe in an *open offer* with a compensatory element:
- (1) the *listed company* must ensure that the *equity securities* to which the offer relates are offered for subscription or purchase on terms that any premium obtained over the subscription or purchase price (net of expenses) is to be for the account of the holders, except that if the proceeds for an existing holder do not exceed £5, the proceeds may be retained for the *company's* benefit; and
  - (2) the *equity securities* may be allotted or sold to underwriters, if on the expiry of the subscription period no premium (net of expenses) has been obtained.
- 9.5.8B** **R** A *listed company* must ensure that for a subscription in an *open offer* with a compensatory element the following are notified to a *RIS* as soon as possible:
- (1) the offer price and principal terms of the offer; and

- (2) the results of the offer and, if any *securities* not taken up are sold, details of the sale, including the date and price per *share*.

Vendor consideration placing

9.5.9 R A *listed company* must ensure that in a *vendor consideration placing* all vendors have an equal opportunity to participate in the placing.

Discounts not to exceed 10%

- 9.5.10 R
- (1) If a *listed company* makes an *open offer, placing, vendor consideration placing, offer for subscription of equity shares* or an issue out of treasury (other than in respect of an employees' share scheme) of a *class* already *listed*, the price must not be at a discount of more than 10% to the middle market price of those *shares* at the time of announcing the terms of the offer for an *open offer* or *offer for subscription of equity shares* or at the time of agreeing the placing for a *placing* or *vendor consideration placing*.
  - (2) In paragraph (1), the middle market price of *equity shares* means the middle market quotation for those *equity shares* as derived from the daily official list of the *London Stock Exchange* or any other publication of an *RIE* showing quotations for *listed securities* for the relevant date.
  - (2A) If a *listed company* makes an *open offer, placing, vendor consideration placing* or *offer for subscription of equity shares* during the trading day it may use an appropriate on-screen intra-day price derived from another market.
  - (3) Paragraph (1) does not apply to an offer or placing at a discount of more than 10% if:
    - (a) the terms of the offer or placing at that discount have been specifically approved by the issuer's shareholders; or
    - (b) it is an issue of *shares* for cash or the sale of *treasury shares* for cash under a pre-existing general authority to disapply section 561 of the Companies Act 2006 (Existing shareholders' rights of pre-emption).
  - (4) The *listed company* must notify a *RIS* as soon as possible after it has agreed the terms of the offer or placing.

9.5.10A G On each occasion that the *listed company* plans to use an on-screen intra-day price it should discuss the source of the price in advance with the *FCA*. The *FCA* may be satisfied that there is sufficient justification for its use if the alternative market has an appropriate level of liquidity and the source is one that is widely accepted by the market.

Offer for sale or subscription

9.5.11 R A *listed company* must ensure that for an *offer for sale* or an *offer for subscription of equity securities*:

- (1) letters of allotment or acceptance are all issued simultaneously and numbered serially (and, where appropriate, split and certified by the *listed company's* registrars);
- (2) if the *equity securities* may be held in uncertificated form, there is equal treatment of those who elect to hold the *equity securities* in certificated form and those who elect to hold them in uncertificated form;
- (3) letters of regret are posted at the same time or not later than three *business days* after the letters of allotment or acceptance; and
- (4) if a letter of regret is not posted at the same time as letters of allotment or acceptance, a notice to that effect is inserted in a national newspaper, to appear on the morning after the letters of allotment or acceptance are posted.

### Reconstruction or refinancing

9.5.12

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- (1) If a *listed company* produces a *circular* containing proposals to be put to shareholders in a general meeting relating to a reconstruction or a re-financing, the *circular* must be produced in accordance with ■ LR 13.3 and must include a working capital statement.
- (2) The requirement for a working capital statement set out in paragraph (1) does not apply to a *closed-ended investment fund*.
- (3) The working capital statement required by paragraph (1) must be prepared in accordance with item 3.1 of Annex 11 of the *PR Regulation* and on the basis that the reconstruction or the re-financing has taken place.

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### Fractional entitlements

9.5.13

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If, for an issue of *equity securities* (other than an issue in lieu of dividend), a shareholders entitlement includes a fraction of a *security*, a *listed company* must ensure that the fraction is sold for the benefit of the holder except that if its value (net of expenses) does not exceed 5.00 it may be sold for the *company's* benefit. Sales of fractions may be made before *listing* is granted.

### Further issues

9.5.14

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When *shares* of the same *class* as *shares* that are *listed* are allotted, an application for *admission to listing* of such *shares* must be made as soon as possible and in any event within one month of the allotment. [Note: Article 64 CARD]

### Temporary documents of title (including renounceable documents)

9.5.15

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A *listed company* must ensure that any temporary document of title (other than one issued in global form) for an *equity security*:

- (1) is serially numbered;
- (2) states where applicable:

- (a) the name and address of the first holder and names of joint holders (if any);
  - (b) for a fixed income *security*, the amount of the next payment of interest or dividend;
  - (c) the pro rata entitlement;
  - (d) the last date on which transfers were or will be accepted for registration for participation in the issue;
  - (e) how the *securities* rank for dividend or interest;
  - (f) the nature of the document of title and proposed date of issue;
  - (g) how fractions (if any) are to be treated; and
  - (h) for a *rights issue*, the time, being not less than 10 *business days* calculated in accordance with ■ LR 9.5.6 R, in which the offer may be accepted, and how *equity securities* not taken up will be dealt with; and
- (3) if renounceable:
- (a) states in a heading that the document is of value and negotiable;
  - (b) advises holders of *equity securities* who are in any doubt as to what action to take to consult appropriate independent advisers immediately;
  - (c) states that where all of the *securities* have been sold by the addressee (other than ex rights or ex capitalisation), the document should be passed to the person through whom the sale was effected for transmission to the purchaser;
  - (d) has the form of renunciation and the registration instructions printed on the back of, or attached to, the document;
  - (e) includes provision for splitting (without fee) and for split documents to be certified by an official of the *company* or authorised agent;
  - (f) provides for the last day for renunciation to be the second *business day* after the last day for splitting; and
  - (g) if at the same time as an allotment is made of *shares* issued for cash, *shares* of the same *class* are also allotted credited as fully paid to vendors or others, provides for the period for renunciation to be the same as, but no longer than, that provided for in the case of *shares* issued for cash.

Definitive documents of title

9.5.16

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A *listed company* must ensure that any definitive document of title for an *equity share* (other than a bearer *security*) includes the following matters on its face (or on the reverse in the case of paragraphs (5) and (7)):

- (1) the authority under which the *listed company* is constituted and the country of incorporation and registered number (if any);
- (2) the number or amount of *securities* the certificate represents and, if applicable, the number and denomination of units (in the top right-hand corner);

- (3) a footnote stating that no transfer of the *security* or any portion of it represented by the certificate can be registered without production of the certificate;
- (4) if applicable, the minimum amount and multiples thereof in which the *security* is transferable;
- (5) the date of the certificate;
- (6) [deleted]
- (7) for *equity shares* with preferential rights, on the face (or, if not practicable, on the reverse), a statement of the conditions thereof as to capital, dividends and (where applicable) conversion.