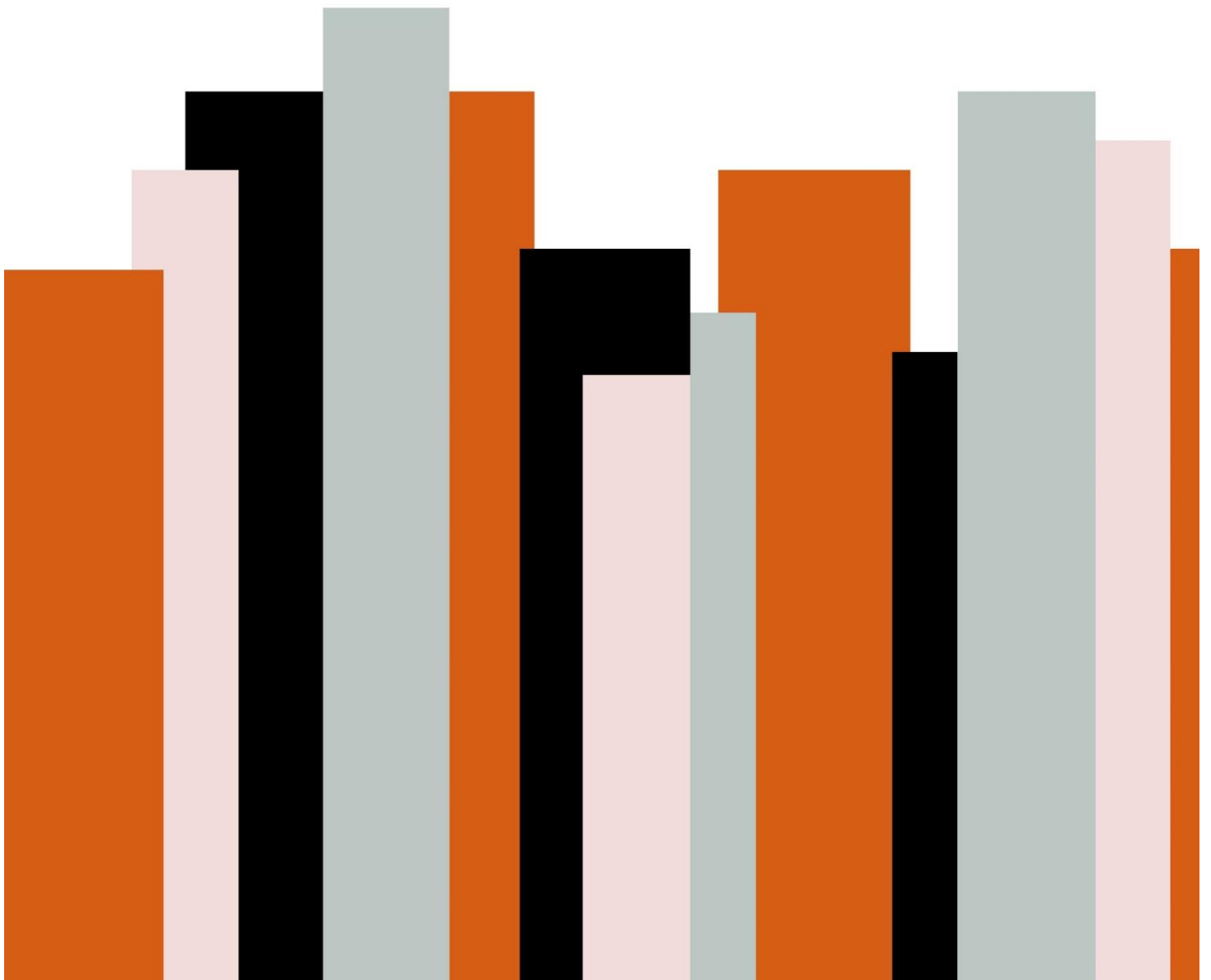


Pre-Emption Group

ANNUAL MONITORING REPORT

2022 – 2023

March 2024



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Introduction from the Chair

Pre-emption rights are an important shareholder protection central to the functioning of UK public capital markets. Their importance is enshrined in UK company law, with the provision that they may be disapplied by a vote of shareholders on a special resolution at a general meeting of the company. Since 2005, the Pre-Emption Group (PEG) has been responsible for setting out guidelines around companies' requests for the disapplication of pre-emption rights.

In 2022, the PEG welcomed Mark Austin's Secondary Capital Raising Review, which made several recommendations concerning its Statement of Principles and the Group's governance. We have since reviewed the Principles and placed the governance of the Group on a firmer footing.

I am pleased to present the PEG's latest report monitoring the use of its updated Statement of Principles. Our findings demonstrate that a majority of FTSE 350 companies have utilised components of the new Principles to seek enhanced disapplication authority at their AGM. We are pleased to see many companies providing disclosure to their shareholders on why their requests are appropriate for the company's circumstances. We encourage companies to continue to provide transparent disclosure to shareholders in seeking and exercising any disapplication authority.

Our monitoring has found widespread shareholder support for enhanced disapplication authorities, with the vast majority of disapplication resolutions passing without significant votes against.

We look forward to continuing to monitor the use and effectiveness of the UK pre-emption regime over the coming year.



Sir Keith Skeoch

Chair of the Pre-Emption Group

Of the FTSE 350 companies with an AGM during the study period:

55.7%

sought enhanced disapplication authority allowed under the new Principles

65.7%

requested authority for a specified capital investment, in addition to authority for general corporate purposes

98.3%

had all disapplication resolutions passed by shareholders

Responding to the UK Secondary Capital Raising Review

In 2021, Mark Austin was appointed the independent chair of the UK Secondary Capital Raising Review (SCRR) tasked with recommending to HM Treasury as to how further capital raising processes by listed companies could be made more efficient. The final review made a number of recommendations concerning pre-emption and suggested a review of the PEG's Statement of Principles and the Group's governance.

Statement of Principles

On 4 November 2022, the Group published a revised Statement of Principles increasing the size of disapplication requests that investors should consider as routine. The new Principles allow companies to seek authority to disapply pre-emption rights for up to 20% of their existing issued share capital – 10% for general corporate purposes and a further 10% for use in connection with an acquisition or a specified capital investment.

The 2022 Statement of Principles also provides companies with the opportunity to conduct a follow-on offer. Companies may seek further authority for no more than 2% to be used only for the purposes of making a follow-on offer in relation to either component of the disapplication request.

Should a company choose to act on their authority and issue equity securities non-pre-emptively for cash, the 2022 Statement of Principles Part 2B describes several shareholder protections which the company should aim to implement.¹

For companies seeking to disapply pre-emption rights for the purpose of refinancing a specified capital investment, the Statement of Principles notes a time limit on how many months prior the investment may have been made. The 2015 Statement of Principles advised a six-month time limit on prior specified capital investments; the 2022 Statement of Principles increases this limit to 12-months.

The 2015 Statement of Principles advised that companies should not issue non-pre-emptively for cash equity securities that represent more than 7.5% of its issued ordinary share capital in any rolling three-year period. The 2022 Statement of Principles places no such limit on the amount of non-pre-emptive issues that a

¹ The Investment Association also issued Share Capital Management Guidelines asking companies seeking 20% authority to provide assurance that they would follow the shareholder protections in the PEG Statement of Principles.

company may seek, within the bounds of any disapplication authority that shareholders may have approved.

The Group has monitored the utilisation of each component of the Statement of Principles in the market and publishes its findings below.

The Group encourages all companies to adopt the 2022 Statement of Principles as best practice.

Pre-Emption Group Governance

The SCRR also set out several recommendations to reinforce the PEG's position as a key stakeholder in the UK public capital markets. In the time since the SCRR was published, the Group has updated its Terms of Reference and revised its membership to better represent the breadth of stakeholders in UK markets. The Group's website has been integrated with the Financial Reporting Council's, making its governance more transparent and publications more accessible.

Over the coming year, the Group will continue to improve its website by integrating a database of post-transaction reports which will be publicly available.

Monitoring

This report examines the implementation of the Statement of Principles by FTSE 100 and FTSE 250 companies for meetings held between 4 November 2022 and 31 July 2023. Future annual reports will cover a 12-month period from August to July each year.

Companies have been categorised by reference to the FTSE index they were a member of at the time of their AGM.

The data was compiled using publicly available company AGM notices, AGM results, and Minerva Manifest AGM voting archives. The PEG would like to thank Freshfields Bruckhaus Deringer and Georgeson LLC for their contributions to data cross-referencing and validation.

Number of companies that sought authority to disapply pre-emption rights during the study period

| Index | Count |
|--------------|------------|
| FTSE 100 | 90 |
| FTSE 250 | 199 |
| Total | 289 |

During the study period 289 FTSE 350 companies held an AGM at which they tabled a resolution seeking authority to disapply pre-emption rights. Companies were included in the sample only if they were a member of the index at the time of their AGM.

Number of companies that sought enhanced authority to disapply pre-emption rights during the study period

| Index | Count |
|--------------|------------|
| FTSE 100 | 31 |
| FTSE 250 | 130 |
| Total | 161 |

Enhanced authority refers to a disapplication request where either the request for general corporate purposes or the request for a specified capital investment exceeded the authority previously allowed under the 2015 Statement of Principles. A total of 161 FTSE 350 companies sought enhanced authority during the monitoring period. This represents 55.7% of the 289 FTSE 350 companies that tabled a resolution to disapply pre-emption rights during this time.

Disapplication requests breakdown

| Index | Percentage disapplication request | | | | | | | | | |
|--------------|-----------------------------------|------------|------------|----------|-----------|------------------------------|-----------|-----------|----------|-----------|
| | General corporate purposes | | | | Follow-on | Specified capital investment | | | | Follow-on |
| | <5% | 5% | 10% | >10% | 2% | <5% | 5% | 10% | >10% | 2% |
| FTSE 100 | 3 | 55 | 32 | 0 | 17 | 1 | 42 | 28 | 0 | 17 |
| FTSE 250 | 0 | 71 | 121 | 7 | 55 | 0 | 50 | 69 | 0 | 52 |
| Total | 3 | 125 | 153 | 7 | 72 | 1 | 92 | 97 | 0 | 69 |

We observed a variety of differently sized disapplication requests put forward during the period. Very few companies used the PEG template resolutions verbatim; most

made some adjustment to the text in order to better align their request with the company’s circumstances and needs, as we expected. Some companies chose to seek disapplication authority for their general corporate purposes only; 65.7% of FTSE 350 companies that put forward a resolution to disapply pre-emption rights sought to do so for the purposes of a specified capital investment.

Time limit on specified capital investment

| Index | 6-months | 12-months | Unclear |
|--------------|-----------|------------|----------|
| FTSE 100 | 35 | 36 | 0 |
| FTSE 250 | 46 | 70 | 3 |
| Total | 81 | 106 | 3 |

Of the FTSE 350 companies that put forward a resolution concerning the disapplication of pre-emption rights in the case of a specified capital investment, 42.6% included the six-month time limit, while 55.8% included the 12-month time limit.

Restriction of authority to disapply pre-emption rights to 7.5% in a rolling three-year period

| Index | Count |
|--------------|-----------|
| FTSE 100 | 30 |
| FTSE 250 | 43 |
| Total | 73 |

The PEG notes that 25.3% of disapplication requests within the FTSE 350 continue to include the limit from the 2015 Statement of Principles in the resolution language, even though it is not present in the 2022 Statement of Principles and no longer considered part of best practice.

Voting results for resolutions on the authority to disapply pre-emption rights

| Index | AGMs where all pre-emption resolutions passed | AGMs where all pre-emption resolutions passed without significant votes against | AGMs where at least one resolution passed with significant votes against | AGMs where at least one resolution failed |
|--------------|---|---|--|---|
| FTSE 100 | 89 | 86 | 3 | 1 |
| FTSE 250 | 194 | 193 | 1 | 4 |
| Total | 283 | 279 | 4 | 5 |

Note that disapplication resolutions must be submitted as special resolutions, and therefore require 75% of shareholders present and voting to support them in order to pass. A significant vote against is defined as 20% dissent or greater of shareholders present and voting.

The Group notes that one company withdrew its only resolution seeking disapplication authority prior to its AGM; therefore, 288 companies in the sample have voting results for resolutions seeking disapplication authority.

Of the FTSE 350 companies which tabled a resolution seeking authority to disapply pre-emption rights, 96.9% had all disapplication resolutions pass without significant votes against. 1.4% of companies had at least one disapplication resolution pass with significant votes against. 1.7% of companies had at least one disapplication resolution fail.

Conclusion

The Group is pleased to see widespread support from shareholders for the enhanced disapplication authority, although it does note that shareholder dissent is very slightly higher on capital-related resolutions than it has been in previous years.

The nine companies which had disapplication resolutions receive significant votes against or fail at their AGMs had put forward a wide spectrum of disapplication requests ranging from 5% to 24% of their existing share capital. From speaking to market participants, the Group is confident that these votes illustrate company-specific issues to do with their history of capital raising and engagement with shareholders, rather than widespread philosophical disagreement with the enhanced authority contained in the 2022 Statement of Principles.

Nevertheless, the Group is aware of a small minority of investors which are voting against all resolutions seeking enhanced disapplication authority due to fundamental disagreement with the new Principles. The persistence of these views will be monitored over longer market cycles, and engagement will be undertaken with relevant stakeholders if necessary.

The PEG found in its monitoring 7 instances of companies seeking disapplication authority outside the bounds of the 2022 Statement of Principles. In all 7 of these cases, companies sought 20% disapplication authority for general corporate purposes. All these resolutions passed without significant votes against from shareholders, indicating high quality disclosure and engagement from the companies explaining why the level of authority is necessary.

The monitoring data reveals that many companies continue to use elements of the 2015 Statement of Principles within their resolutions requesting disapplication authority. The Group emphasises that the 2022 Statement of Principles now constitutes best-practice and companies should aim to align their requests accordingly, even if they do not seek the full amount of enhanced authority.

The Group continues to advocate that companies engage with their shareholders on pre-emption rights in advance of tabling a resolution seeking pre-emption disapplication authority. Companies should also aim to provide their investors with detailed, transparent disclosure when they choose to utilise any disapplication authority that they have been granted during a capital raising.

Companies are required to submit a post-transaction report to the Group following a capital raising in which they utilise a pre-emption disapplication authority. Part 2B of the Statement of Principles provides a template of the information disclosure

required. Over the next year, the Group will implement a public database of post-transaction reports to make the information widely accessible.

If investors become aware of companies misusing disapplication authorities, including the use of cash box structures to raise funds in excess of the disapplication authority that has been granted by shareholders at the company's most recent AGM, they should contact the Group.

Contacting the Pre-Emption Group

Any comments on this report, and any other correspondence, should be addressed to the Secretary of the Pre-Emption Group and sent to:

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