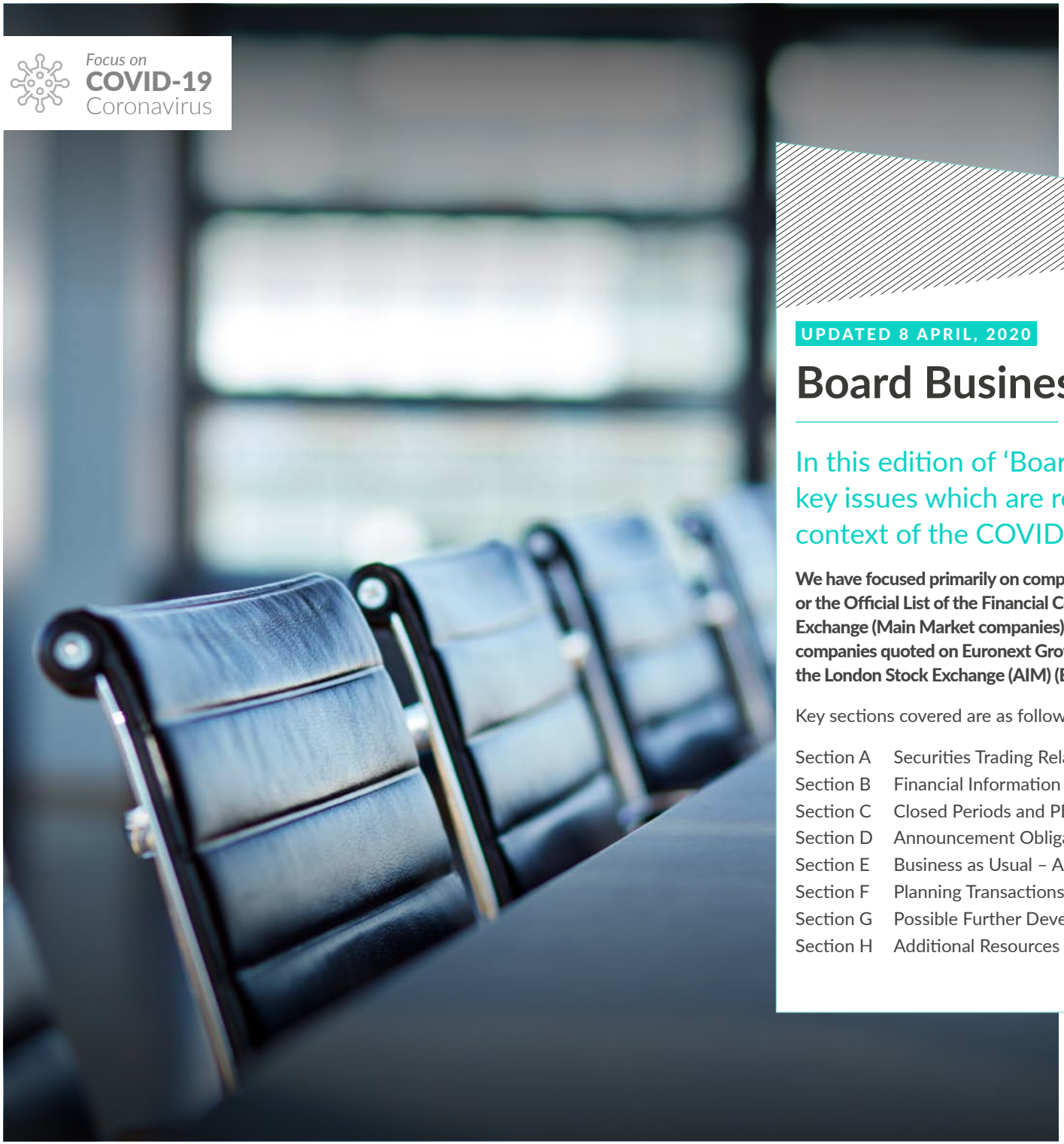


Focus on
COVID-19
Coronavirus

A&L Goodbody

UPDATED 8 APRIL, 2020

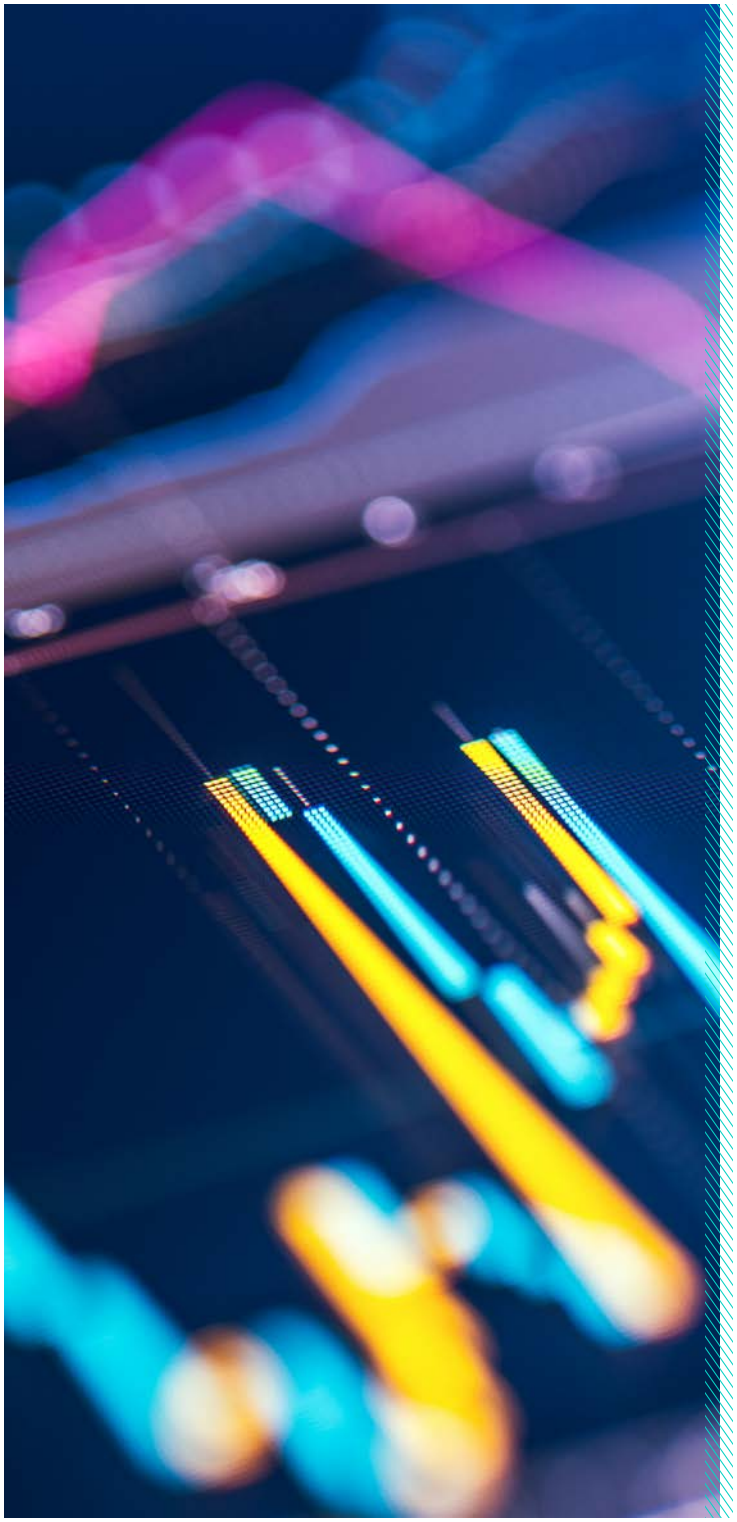
Board Business: *PLC Matters*

In this edition of 'Board Business' we look at some of the key issues which are relevant to Irish listed companies in the context of the COVID-19 crisis.

We have focused primarily on companies listed/traded on the main market of Euronext Dublin and/or the Official List of the Financial Conduct Authority (FCA) and the main market of the London Stock Exchange (Main Market companies), but where relevant have also included information relevant to companies quoted on Euronext Growth Dublin (ENXG) and/or the Alternative Investment Market of the London Stock Exchange (AIM) (ENXG or AIM companies).

Key sections covered are as follows:

You will find a full range of timely materials for businesses in our dedicated **COVID-19 HUB** on our website.



Securities Trading Related – Suspension and Short Selling

QA1: *Under what circumstances could we request that trading in our securities be suspended?* UPDATED

AA1: Other than transactions which necessitate suspension (such as reverse takeovers) there is some limited scope for an issuer to request a suspension. It must do so in writing detailing all relevant information and is generally advised to have thoroughly examined the justification for a suspension before making any submission.

A suspension request will normally not be acceded to unless the relevant regulator is satisfied that the circumstances justify the suspension. This was reiterated by the FCA in its Primary Markets Bulletin on COVID-19 issued on 17 March, 2020 (available here) where it stated it would "challenge the need for suspension where we think the situation is more appropriately addressed by an announcement to the market".

AIM have recently published a COVID-19 update (available here) in relation to the possible availability of a temporary suspension where a company requires more time to make a fully compliant notification under the AIM Rules as a consequence of COVID-19. They advise that companies will need to fully explain why the suspension is appropriate in the circumstances and note that any decision to suspend will be at the discretion of AIM Regulation. However, it does appear that AIM may be more sympathetic to requests for suspension in the current environment. We understand that ENXG is considering the position with respect to ENXG companies. (See QB2 for updates in relation to possible extensions for publication of financial information without a suspension of trading.)

Where a company is listed in more than one market and requesting a suspension, it will need to engage separately with each relevant regulator but the imposition of a suspension in one market will be a factor considered by the other market.

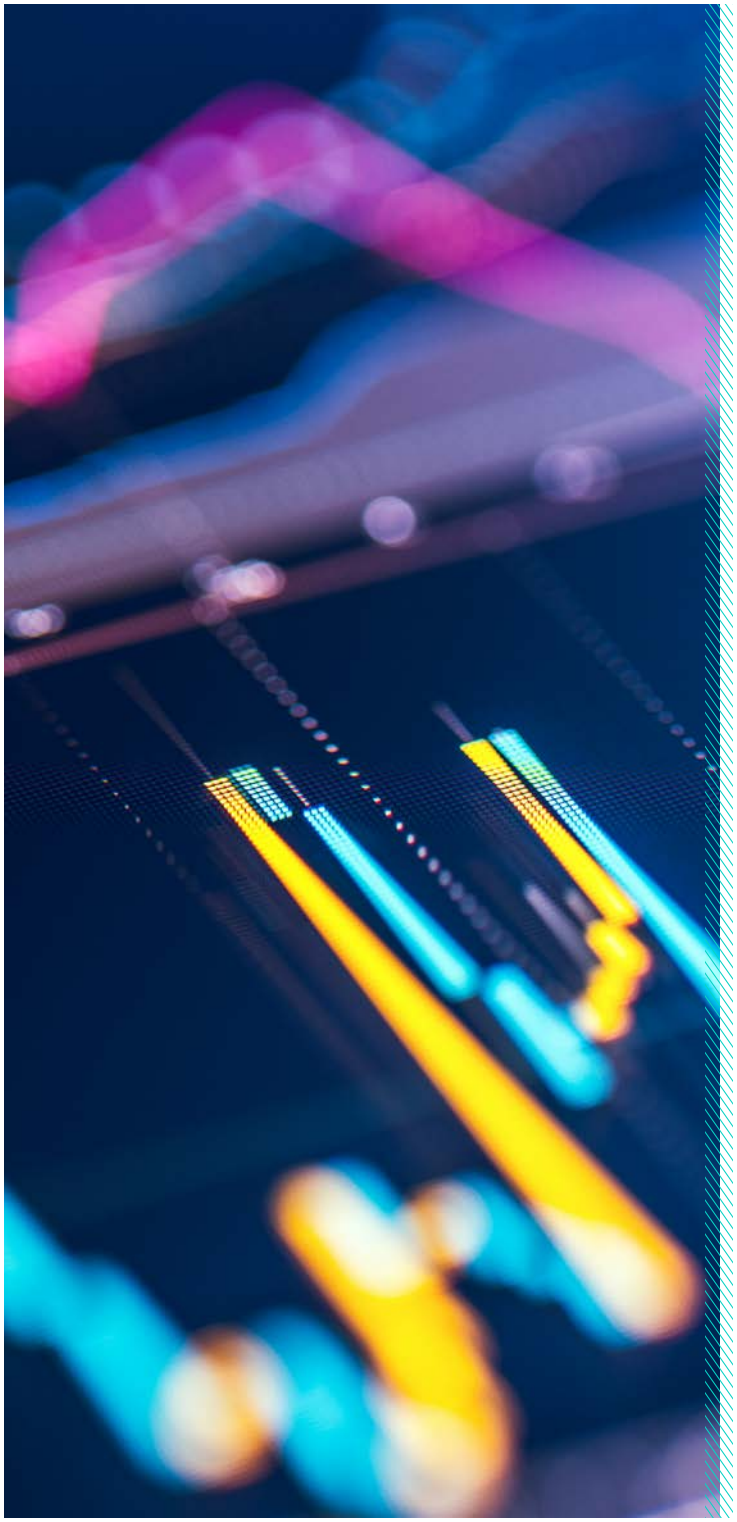
QA2: *When might the Stock Exchange(s) impose a suspension of trading in our securities?* UPDATED

AA2: In recent years, given the emphasis on disclosure and transparency, suspension (other than for breach of certain obligations) has generally been seen as a last resort by regulators.

The rules of Euronext Dublin and the FCA (the UK Listing Authority) each provide for suspension at their respective discretion if the smooth operation of the market is, or may be, temporarily jeopardised or where such suspension is necessary to protect investors (whether or not at the request of the issuer or its agent on its behalf). Examples include where an issuer has failed to meet its continuing obligations, where it has failed to publish financial information in accordance with the Listing Rules (but see QB2 for updated position), where it is unable to assess accurately its financial position and inform the market accordingly or where there is insufficient information in the market about a proposed transaction. Suspension may also be imposed where there is a direction from the Central Bank of Ireland to do so under a number of EU Directives.

For ENXG/AIM companies suspension may be imposed where trading in securities is not being conducted in an orderly manner, where Euronext Growth/AIM respectively consider that the company has failed to comply with the market rules, where the protection of investors requires suspension, where the integrity and reputation of the market has been or may be impaired by dealings in those securities, or where it is directed to do so by the Central Bank of Ireland under a number of EU Directives. (See also QA1 above in relation to the recently stated position of AIM in the context of COVID-19.)

Continuing obligations continue to apply to a company after its suspension.



QA3: *Is there a possibility of 'whole market' suspensions being imposed?*

AA3: On balance, this seems unlikely and would likely be detrimental in terms of access to capital at a time when all options in relation to liquidity may need to be considered. We also think it is probably unlikely that Ireland would take any unilateral decision in relation to its public markets, given the signalling impact internationally.

However, it could not be ruled out on a 'whole market' or sectoral basis where the smooth operation of the market was at risk, whether as a result of there being insufficient / inadequate information available to the market to achieve efficient pricing or where the market was unable to function due to market makers/other market participants being in lock down. In the event of any other jurisdictions imposing a 'whole market' or sectoral suspension (particularly the UK) the probability of an Irish market suspension would increase.

Restrictions on short selling (see QA4) would seem to be a more likely initial policy response, in preference to market suspensions.

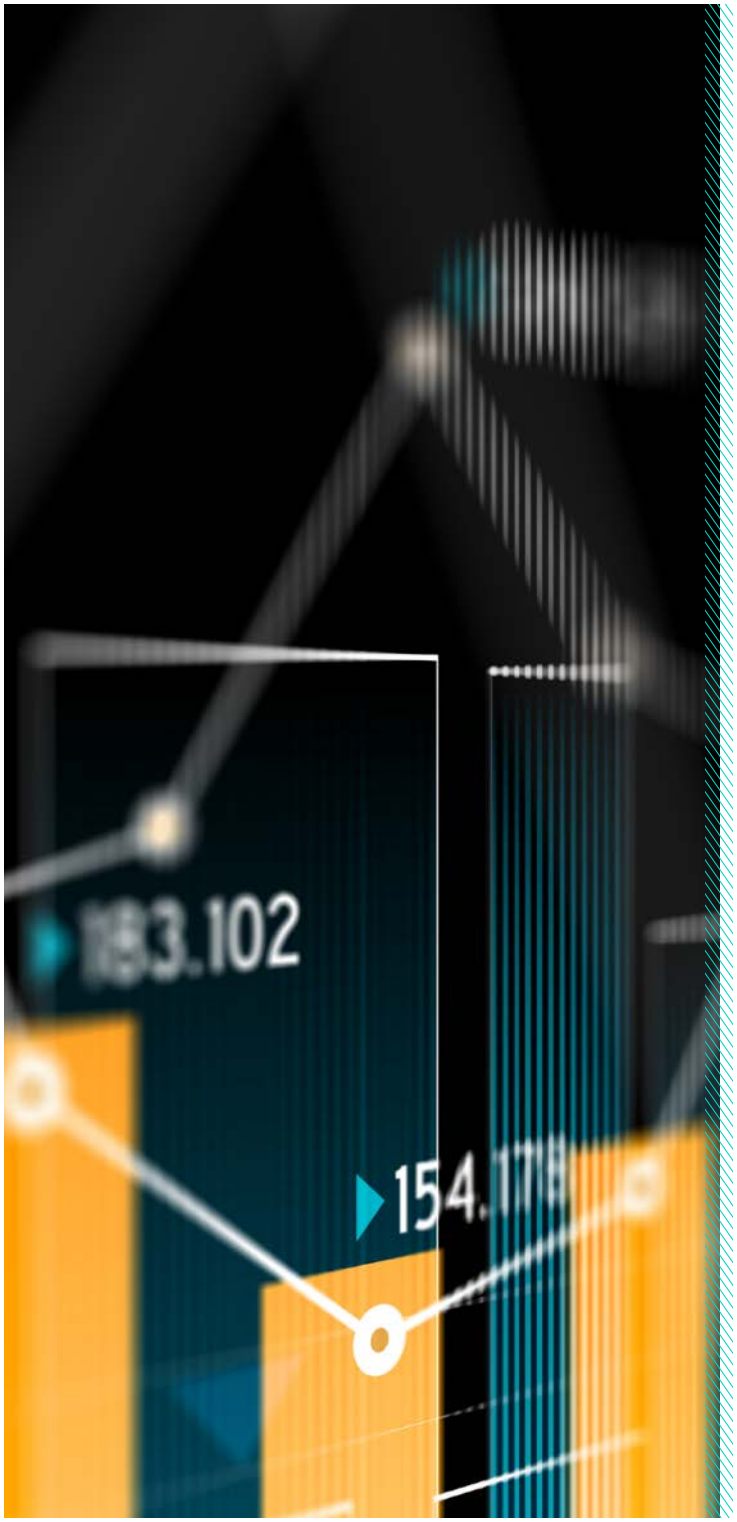
QA4: *What are the new short selling rules and where can we get access to publicly disclosed short positions in our securities?*

AA4: There has now been an outright ban on short selling in a number of EU countries (see section G below).

However, neither Ireland nor the UK have imposed such a general ban (the UK has indicated it sets a high bar on imposing such a ban and believes that short selling can continue to aid open markets by supporting effective price formation, enhancing liquidity and enabling risk management). On 16 March, 2020 ESMA announced a change to the notification threshold for net short positions from 0.2% to 0.1%. The ESMA notification is available here. The short selling regulations are applicable only to Main Market companies.

The UK confirmed on 17 March, 2020 that they will also apply this change to the notification threshold. The FCA statement on short selling bans and reporting is available here.

For Irish companies, the historic and current public register of net short positions is available on the Central Bank of Ireland website and can be accessed here. For companies subject to the UK short selling regulations, the historic and current public register of net short positions is available on the FCA website and can be accessed here.



Financial Information

QB1: ***We understand the FCA has imposed a moratorium in relation to the publication of the preliminary statement of financial results over the next 2 weeks (from 22 March, 2020). What does this mean and is it applicable to us?*** UPDATED

AB1: A preliminary statement of financial results is a voluntary statement made in advance of the issue of the Annual Report. For Main Market companies, its content is informed by the Listing Rules. For ENXG/AIM companies its content is informed primarily by market practice.

Notwithstanding its voluntary nature, the majority of companies choose to issue a preliminary statement. Its benefits include that it cleanses the company of information earlier than would be the case where the Annual Report is being finalised, enabling subsequent shareholder interaction, and that it can, in certain circumstances, allow for the cessation of the closed period associated with annual financial results.

At this stage, many companies with a 31 December year end will have already published their preliminary statements and will now be working on the completion of the Annual Report.

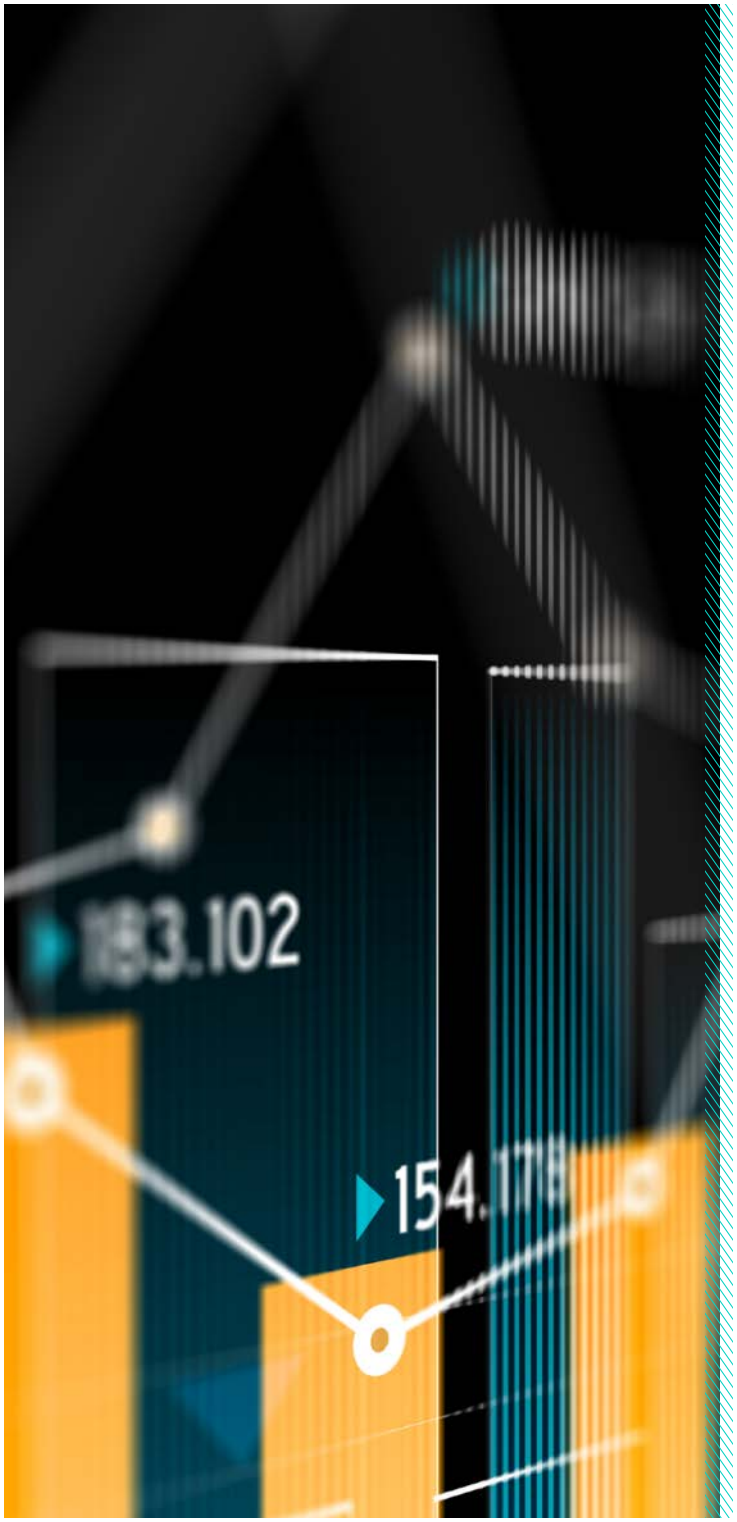
For those that have not, the FCA has asked companies to observe a two week (at least) moratorium so that they can give due consideration to recent events. They have also indicated that they believe the practice of issuing preliminary financial statements in advance of the full audited financial statements is adding unnecessarily to the pressure on companies and the audit profession at this moment. In their Q&A on the moratorium the FCA have also discouraged companies from issuing a Q4 trading update in lieu of a previously scheduled preliminary results statement.

On 26 March, 2020 the FCA announced that the moratorium on preliminary financial results would end on 5 April, 2020 (in light of its additional measures in relation to annual financial information (see QB2 for updated position)) but noted that it still believes that the practice of issuing financial statements earlier than required will add unnecessarily to the pressure on companies and the audit profession.

This is a highly unusual development and shifts the emphasis from speed of dissemination of information by companies to the quality and usefulness of the information being provided. Part of the objective of the FCA is likely to be a muting of recent extreme market volatility.

Notwithstanding any decision by a company to observe the moratorium, each company will need to continue to have regard to their obligations under the Market Abuse Regulation (MAR) (see QD1 below).

The FCA requested moratorium is not applicable to ENXG/AIM companies. However, we understand that AIM has written to its constituent companies with a similar request.



QB2: *What are the regulatory deadlines for publication of Annual Reports? Have these changed? Are they expected to change?* UPDATED

AB2: For Main Market companies the deadline is normally 4 months after the period end. However there have now been further updates on this requirement.

FCA: On 26 March, 2020 the FCA, in conjunction with the FRC and the PRA (the joint statement is available here), announced a number of actions aimed at providing relief to listed issuers in respect of their financial reporting obligations. These included an additional 2 month period within which to publish audited financial statements, i.e. for companies with a 31 December, 2019 year end extending the deadline from 30 April, 2020 to 30 June, 2020. The FCA have made it clear that they do not expect an issuer to request a suspension of trading where they fail to publish within the 4 month deadline and will not unilaterally suspend the listing for breach of the deadline (though they reserve the right to take this action if necessary for other reasons).

This extended deadline is not mandatory, i.e. a company can still choose to issue its annual report before the 30 April, 2020 deadline if it is in a position to do so. However the FCA has urged companies to use the additional period if appropriate and have urged market participants not to draw undue adverse inferences when companies do make use of the extra time. The detailed statement from the FCA is available here, with a Q&A on the subject available here, and the updated edition of their Primary Markets Bulletin No. 27 (issued on 17 March, 2020 and updated on 26 March, 2020 is available here).

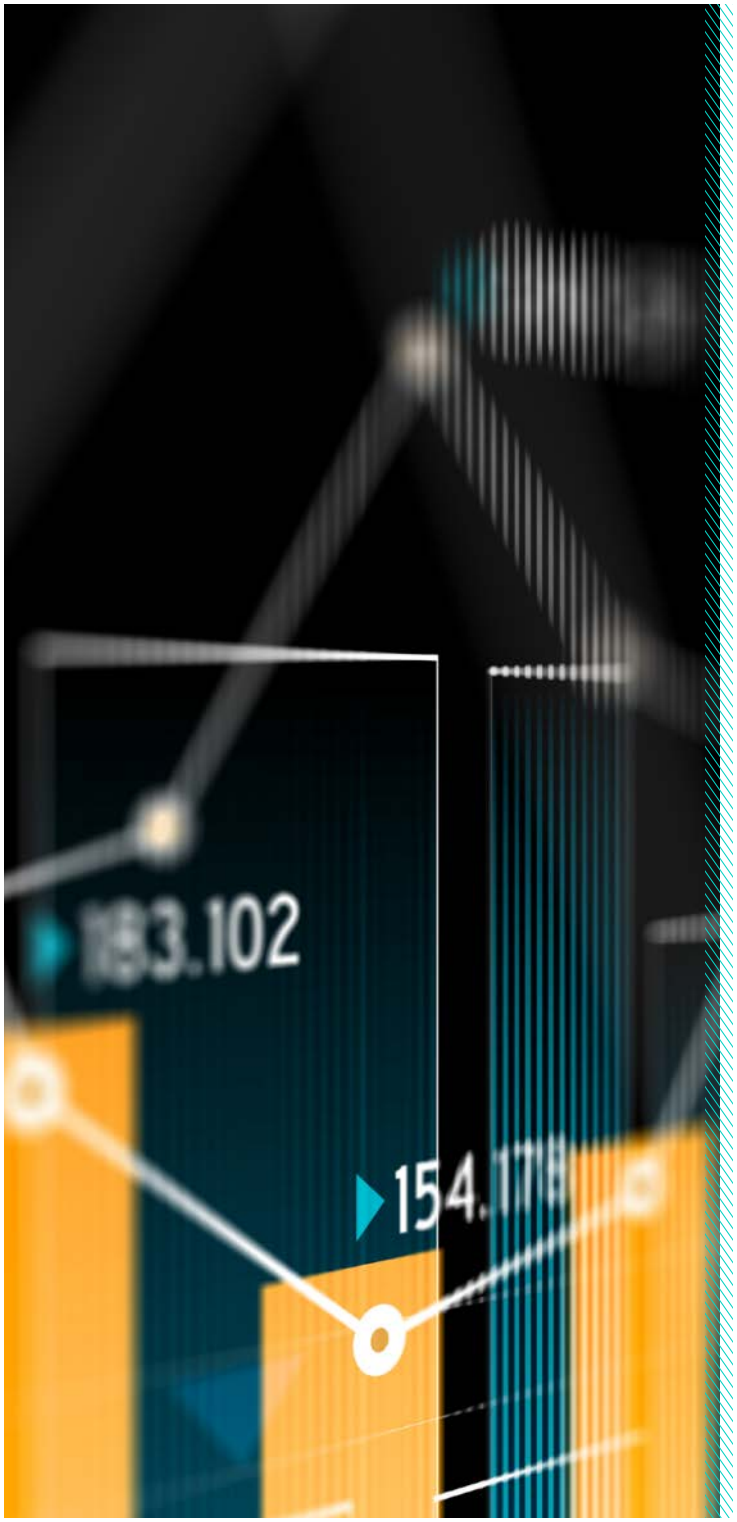
ESMA: On 27 March, 2020 ESMA issued a statement (available here) promoting co-ordinated activity by national competent authorities regarding issuers' obligations to publish periodic information for reporting periods ending on 31 December, 2019 or after in the context of COVID-19. ESMA advised that it expects national competent authorities (this is the Central Bank of Ireland in the case of Irish companies with securities traded on a regulated market) not to prioritise supervisory actions against issuers for a 2 month period following the Transparency Directive deadline (i.e. to 30 June, 2020) and in respect of half-yearly financial reports in respect of a period ending on or after 31 December, 2019 but before 1 April, 2020 for a period of 1 month following the Transparency Directive deadline.

The effect of this is that it should provide an issuer with an additional 2 month period within which to publish its audited annual financial statements, without risking the imposition of a trading suspension by the Central Bank of Ireland. At the time of writing, while IAASA has acknowledged the statement from ESMA, the Central Bank of Ireland had not provided any commentary on this. Where a company is intending to avail of this flexibility, it is advisable to consult with the Central Bank of Ireland in advance.

For ENXG/AIM companies, the deadline for annual financial information is normally 6 months after the period end. However extensions have now been provided for as follows:

ENXG: On 30 March, 2020 Euronext Dublin wrote to ENXG companies advising them that where they are unable to meet the prescribed financial reporting deadline for annual reports, they can apply to Euronext Dublin for a 3 month extension to the reporting deadline. They have indicated they will keep under review the reporting requirements for half yearly reports.

AIM: On 26 March, 2020 AIM issued a statement (available here) advising that an AIM company will be able to apply to AIM Regulation for a 3 month extension to the financial reporting deadline. This is available for AIM companies with financial year ends between 30 September, 2019 to 30 June, 2020. AIM have also indicated they will keep under review the reporting requirements for half yearly reports.



A summary of the current position with respect to reporting deadlines is included below:

Market on which Listed	Main Market London	Main Market Dublin	ENXG	AIM
Preliminary Results	Moratorium lifted 5 April. No obligation to issue.	No obligation to issue.	No obligation to issue.	No obligation to issue.
Annual Report	Automatic extension from 4 months to 6 months until further notice.	CBI not to prioritise supervisory actions for missing 4 month deadline by up to 2 months. Issuer should contact CBI.	Apply to ENXG for extension of up to 3 months (beyond the 6 month deadline).	Apply to AIM Regulation for extension of up to 3 months (beyond the 6 month deadline).
Half Yearly Report	3 month deadline unchanged but companies urged to make full use of the time available.	CBI not to prioritise supervisory actions for missing 3 month deadline by up to 1 month (but only where reporting period ends on or after 31 December, 2020 but before 1 April, 2020).	3 month deadline. Being kept under review.	3 month deadline. Being kept under review.

In the US (see section G below) the possibility of an extension of the period for filing financial results, on application to the SEC by an affected company, has been announced.

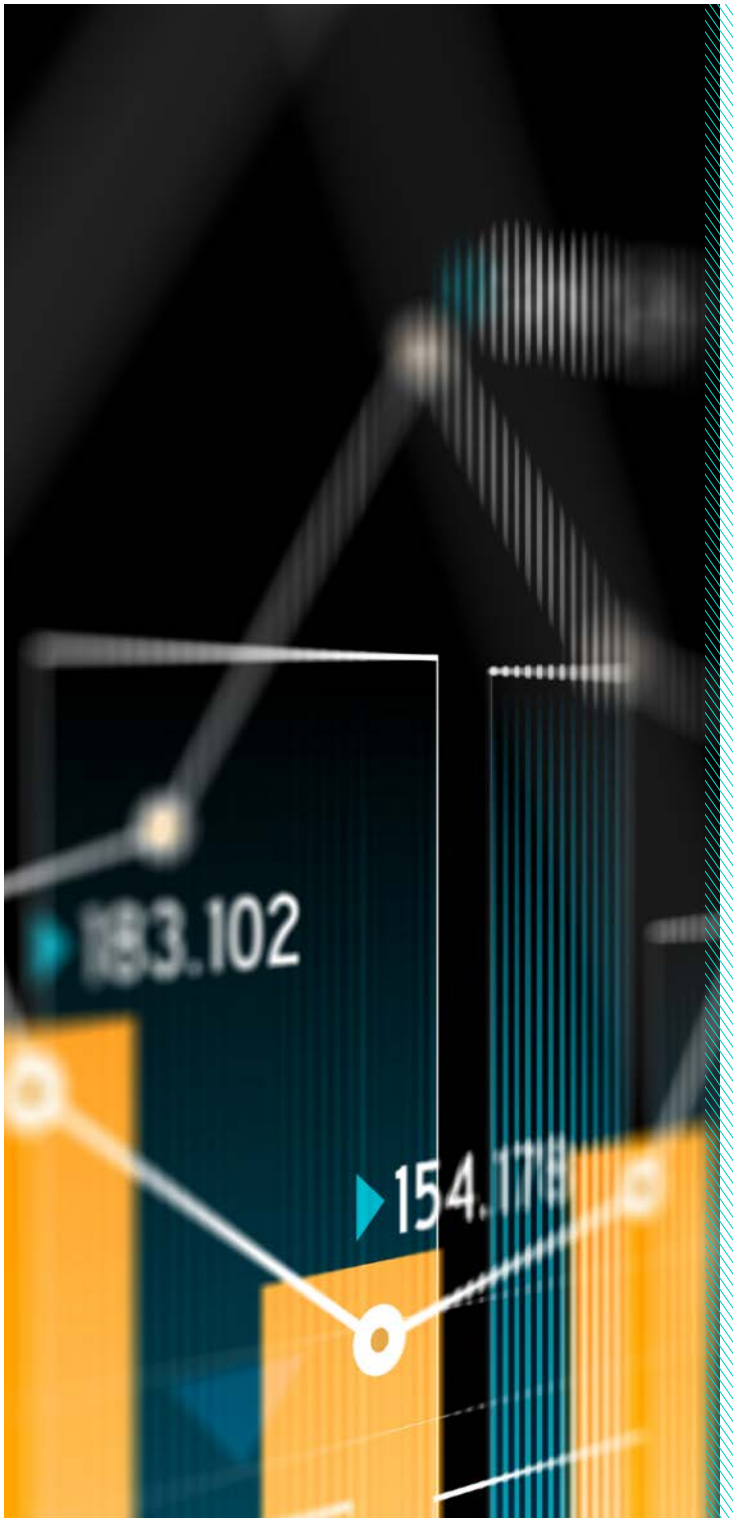
QB3: Are there any company law limitations which will impact on the ability of an issuer to avail of the relaxed deadlines for annual report publication?

NEW

AB3: For Irish registered companies, there is a requirement that no more than 15 months may elapse between the last Annual General Meeting and the next one. As the audited financial statements must, at the latest, accompany the Notice of the Annual General Meeting, the latest date for Notice of the Annual General Meeting represents a further deadline, which may be earlier than the modified requirements of the relevant stock exchange. At the time of writing we are not aware of any proposal to provide relief from this provision of the Companies Act, 2014 in the context of COVID-19.

Irish registered companies are also required to have laid their annual financial statements before shareholders not later than 9 months after the year end.

In addition, the FRC Guidance in respect of Board Effectiveness relating to the UK Corporate Governance Code 2018 requires that the Notice of Annual General Meeting, and related papers, are issued 20 working days before the Annual General Meeting.



B Financial Information

QB4: *What are the regulatory implications of failing to release financial results by the regulatory deadlines?* UPDATED

AB4: Typically, where a company believes it will be unable to release results by the prescribed deadline (30 April in the case of a Main Market company with a 31 December year end) and 30 June in the case of a company quoted on Euronext Growth/AIM with a 31 December year end) the relevant company will need to advise the relevant regulator of its position in advance and request a suspension.

As noted under QB2, it is not now expected that suspension will need to be requested by an issuer, nor will it be imposed by the relevant regulator, where an issuer fails to meet the original reporting deadlines but adheres to the new deadlines for the relevant market (having sought an extension where this is a requirement of that market).

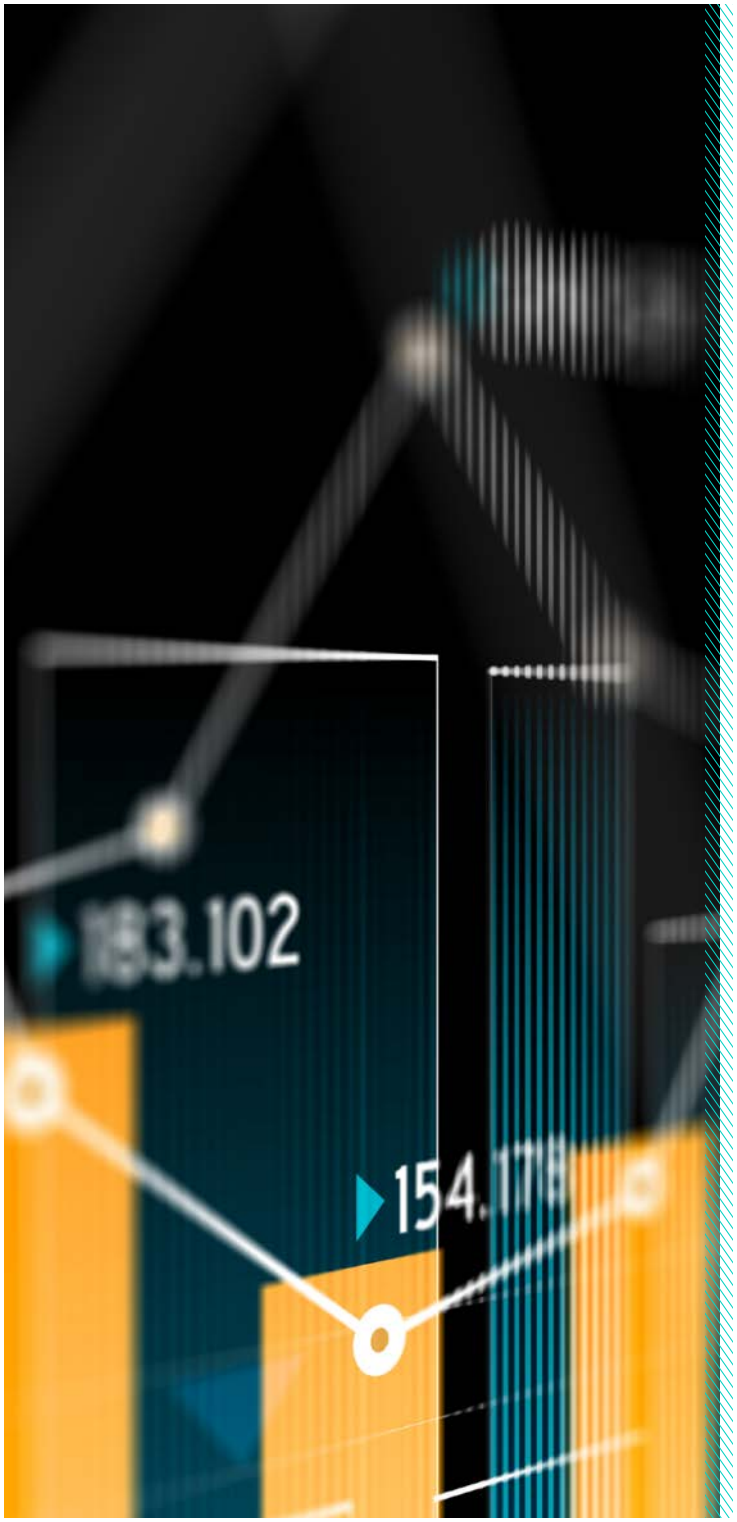
It is also noteworthy that AIM have also indicated they will extend the period before cancellation of trading is imposed following a suspension from 6 months to 12 months for securities suspended between 30 September, 2019 and 1 July, 2020.

QB5: *What are the Annual Report disclosure considerations in relation to COVID-19? What has the Financial Reporting Council said?* UPDATED

AB5: On 18 February, 2020 the FRC published a short statement encouraging companies to consider the impact of COVID-19 in relation to their year end-accounts. This is available here.

While the context of this advice has now been overtaken by the global impact of COVID-19 (its emphasis was on companies with exposure to China) the key areas for consideration remain relevant: disclosure of risks and uncertainties and mitigation actions and the effect on carrying value of assets and liabilities.

On 26 March, 2020 the FRC issued guidance to boards in relation to corporate governance and reporting in the context of COVID-19. This is available here. This focuses in particular on annual report disclosures and notes that notwithstanding uncertainties in relation to the extent or duration of COVID19, companies are expected to be able to articulate their expectations of the possible impact of COVID-19 on their specific business in different scenarios. In relation to the required viability statement, it is acknowledged that the required reasonable expectation of viability will have a lower level of confidence than in normal circumstances, but boards are advised to draw attention to any qualifications or assumptions necessary. In describing such qualifications, boards are asked to describe the limits of their predictions, the level of confidence with which they have been made and the uncertain future events that could prove critical to viability. Disclosure of key assumptions made and future



B Financial Information

scenarios considered is also recommended. This is, in general, a more fulsome approach to disclosure than normal in relation to the viability statement.

We had noted in the earlier edition of this note the likelihood of a higher proportion of going concern opinions containing an emphasis of matter. The FRC have also indicated that they expect more companies will disclose "material uncertainties" to going concern in the current circumstances. The FRC have usefully identified the range of matters which a board should assess in relation to its judgment as to the existence of material uncertainty. If the board does not believe a material uncertainty exists, but reaching this conclusion required significant judgment, then they are required to disclose this judgment.

Directors should take legal advice in relation to their fiduciary and statutory duties to the extent that financial duress intensifies and the sustainability of the company is called into question.

A statement from ESMA on 11 March,2020 which has been republished by IAASA, (available here) asked companies to provide transparency on the actual and potential impacts of COVID-19, to the extent possible based on both a qualitative and quantitative assessment on their business activities, financial situation and economic performance in their 2019 year-end financial report if these have not yet been finalised or otherwise in their interim financial reporting disclosures.

QB6: *What advice has been provided to Auditors in respect of dealing with the impact of COVID-19 in the content of auditing financial statements?*

NEW

AB6: On 25 March, 2020 the Committee of European Audit Oversight Bodies (CEAOB) issued a statement advising auditors of their responsibilities with respect to the impact of COVID-19. This is available here.

On 26 March, 2020 the FRC also issued guidance to auditors carrying out audit engagements which may be affected by COVID-19. This is available here. Both documents may usefully be reviewed by public companies in the context of the process of audit completion.

Closed Periods

QC1: ***If our publication date for financial results changes, what will be the impact on closed periods?***

AC1: For Main Market companies, the formal closed period (as defined in MAR) in respect of year end financial results is the 30 day period ending on the date of publication of the financial results or, if the company chooses to publish earlier preliminary results and the preliminary results statement contains all the key information relating to the financial figures expected to be included in the year-end report, ending on the date of that announcement.

Delayed disclosure of annual financial results will mean that the closed period will also be extended so as to terminate on the new publication date.

Note also that many companies, in their Share Dealing Code/ Securities Trading Policy, begin a closed period immediately following the end of the relevant financial period. Delayed publication will therefore also give rise to a longer closed period for these companies.

Even where companies have issued their preliminary results but are now in the process of completing their Annual Report and/or considering the impact of COVID-19 on the business prospects and strategy, companies should consider whether they should impose a prohibition on dealing for those with access to such deliberations.

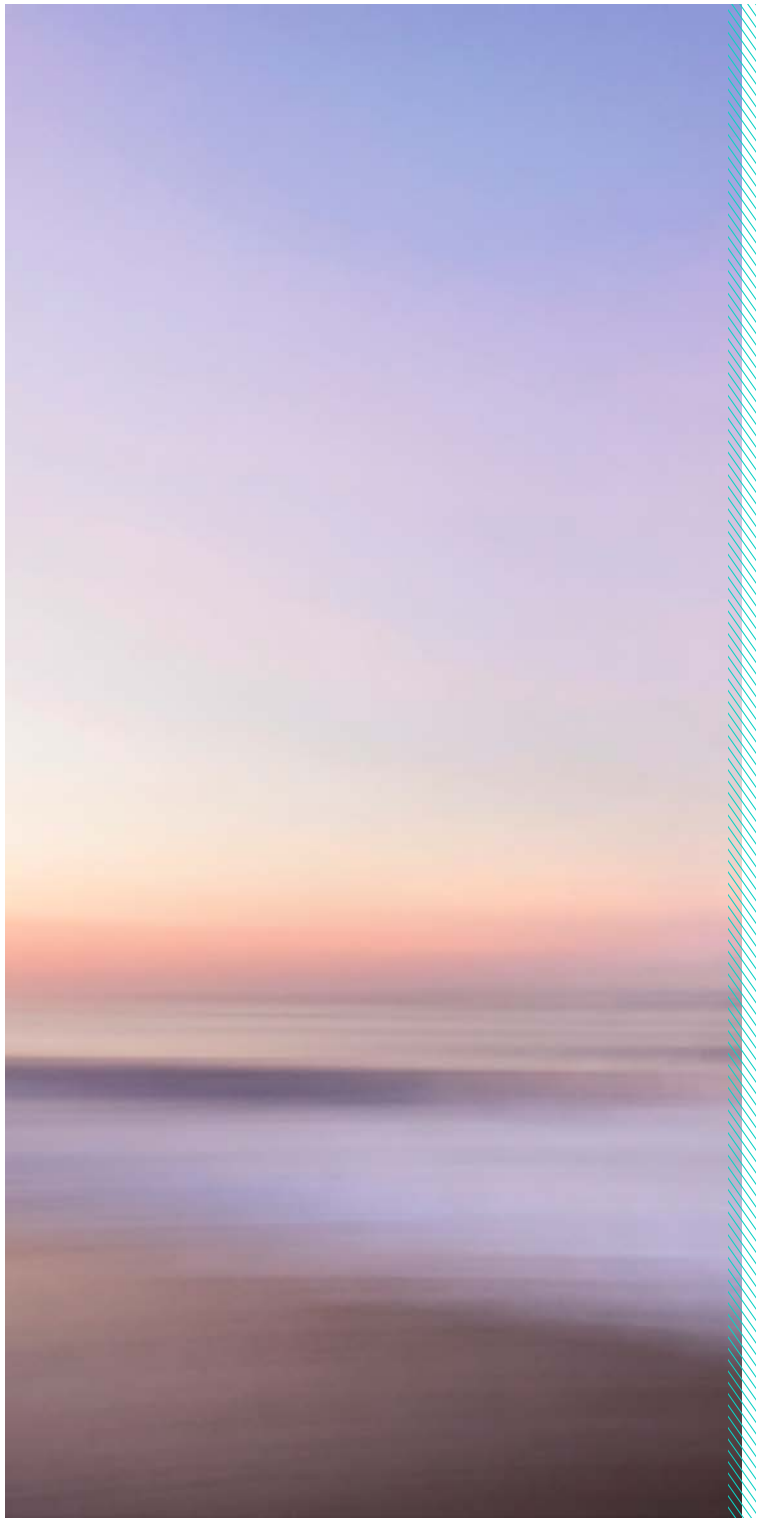
This type of situation is addressed in Q2 of the ESMA Questions and Answers on the Market Abuse Regulation (13 July 2016 | ESMA/2016/1129) available here:

"In the event the information announced in such way changes after its publication, this will not trigger another closed period but should be addressed in accordance with Article 17 of MAR."

QC2: ***Are there any other matters for consideration in relation to closed periods and possible PDMR trading?***

AC2: The FCA has reiterated that it expects 'persons discharging managerial responsibility' and 'persons (who are) closely associated' to continue to meet their notification obligations under MAR within the required time frame.

In a rapidly evolving situation such as that of COVID-19, where strategy is likely to be reactive, we think it will be important, in the context of any contemplated dealing, for any PDMRs to carefully, and dynamically, consider the nature, and cumulative value, of information they may have access to due to their position which is not in the public domain and which might be likened to 'inside information' even where, technically at least, it is not considered to be 'inside information'.



Announcement Obligations in relation to the impact of COVID-19?

QD1: *What are our obligations in terms of update announcements relating to COVID-19?*

AD1: This must be assessed on a case by case basis in light of the impact of COVID-19 and of the measures being taken to halt its spread, on your business.

The overriding obligation on Irish quoted companies is to comply with MAR and to release inside information to the market without delay. In its statement on 11 March, 2020 (available here) ESMA advised that issuers should disclose as soon as possible any relevant significant information concerning the impacts of COVID-19 on their fundamentals, prospects or financial situation in accordance with their transparency obligations under MAR.

While for some kinds of 'inside information' a delay mechanism under MAR may exist (eg. contemplated transactions) not all developments can avail of it (eg. profit warning) and separate advice should be taken.

QD2: *What do we need to do if we decide not to proceed with a final dividend for last year?* UPDATED

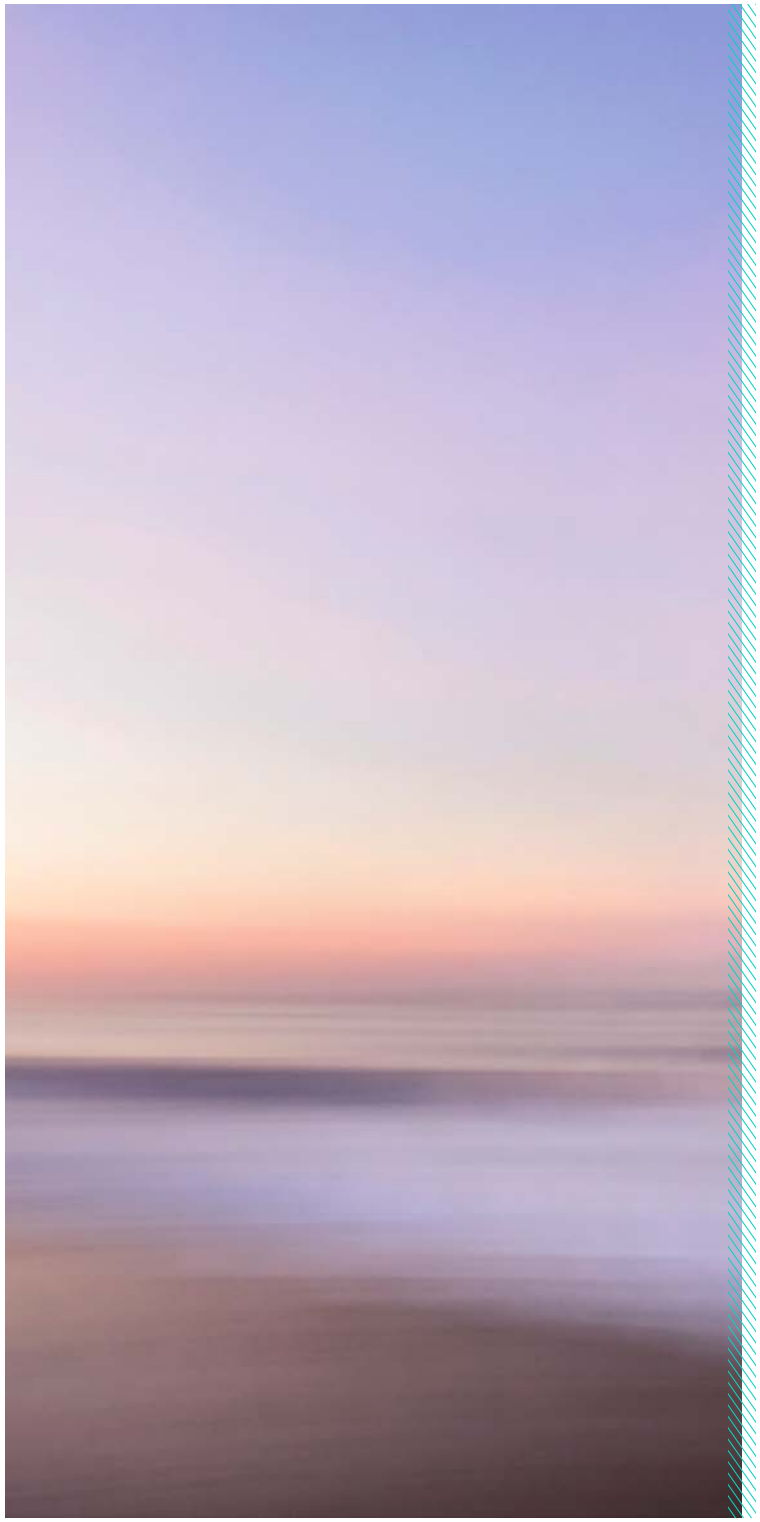
AD2: If a final dividend has already been announced (for example, with a preliminary results announcement) but the board subsequently decides not to pay it in the interests of conserving cash, the board may, prior to the AGM, withdraw its recommendation – and thereby, in effect, the resolution. This would be done by way of an announcement. An announcement would also be required where the Notice of AGM has not yet issued, but the dividend had been announced and the board subsequently decides not to pay it.

We have already seen a number of these types of announcements in the UK and Irish market.

Notably the FRC has now advised directors of those companies which have proposed but not yet made a dividend that they need to consider not only the position of the company at the time when the divided is or was proposed but also when it is made. They note that the assessment of whether a dividend is appropriate should include consideration of current and likely operational and capital needs, contingency planning and the directors' legal duties, both in statute and common law. The FRC statement is available here.

QD3: *Have there been any changes to Dividend Procedures as a result of COVID-19?* NEW

AD3: The London Stock Exchange (LSE) has issued an update to its Dividend Procedure Timetable in the context of COVID-19. In normal circumstances an issuer is required to pay cash dividends within 30 days of the record date. The LSE is now permitting a deferral period for payment of up to 30 business days, but no more than 60 business days from a record date. After the expiry of the deferral period, the dividend must be paid or cancelled. Any cancellation must be notified to the market (see QD2). The LSE notice is available here.



D Announcement Obligations in relation to the impact of COVID-19?

A&L Goodbody

QD4: *We have 'live' financial forecasts. What should we do in relation to COVID-19?*

AD4: This is a very fact specific matter, and the difficulty for a company is compounded by the fact that the company may not yet have adequate or sufficiently reliable information available to it to allow it to confidently withdraw a forecast or to indicate an alternative, or even the timeframe within which an alternative forecast may be capable of being made.

Consultation with your broker/financial adviser is recommended. In any event it will be important that when drafting an 'update' statement, its content is considered in the light of a range of scenarios which may emerge (so as to mitigate against it being misleading in retrospect), and against the background of the obligation to comply with MAR and the disclosure standards of the market on which securities are traded.

QD5: *We do not have any 'live' financial forecasts but there is a market consensus in relation to the current fiscal period.*

AD5: In this situation, the company may have some small additional flexibility relative to the situation in QD4 above. However, the company will need to carefully consider its obligations and promptly consult with its broker or financial adviser in light of any changed internal view as to the credibility of market consensus.

QD6: *What are the obligations if members of our Board or Senior Management team contract COVID-19 and are unavailable for work?* UPDATED

AD6: This is an area where contingency plans should be put in place generally. Additionally, under MAR the price sensitivity of such a development will need to be considered on a case by case basis and in the context of the circumstances of each individual company (for example whether an individual can continue to participate in the management of the business while self-isolating, whether it will be necessary to appoint an alternative person in an acting capacity etc). Where internal communications around a senior staff member are necessary, the heightened likelihood of a leak should also be considered.

For Main Market companies, consideration should also be given to the provisions of the Listing Rules which require announcement of "important changes to the role, functions or responsibilities of a Director".

Notably, in its statement on the governance impact of COVID-19 (available here) Glass Lewis have called out the particular risk in relation to the lack of age and gender diversity among company directors and to a lesser extent, management, *"given men and those aged 65 and over are much more likely to die or become seriously ill"*. They observe a resultant systematic risk given directors generally sit on more than one board, and the additional time commitment likely to be required of directors generally in dealing with the COVID-19 crisis. It therefore appears that proxy advisory groups such as Glass Lewis will pay increased attention to succession planning and board renewal programmes in the context of COVID-19.

Business as Usual - AGMs, Awards, Employee Share Schemes, Pension Schemes

QE1: *What are our options in relation to the AGM (or any EGM) given group gathering restrictions?*

AE1: Companies may be required to hold AGMs or other shareholder meetings in the coming period whilst significant restrictions are in place.

Should it go ahead as scheduled? Companies will need to be mindful of Government and public health guidance, health and safety considerations – including how and where the meeting is to be held, the requirement under existing law to hold an AGM no later than 15 months following the previous one, and the timing of expiration of existing shareholder authorities. In any case, specific advice ought be taken.

No Notice of AGM/EGM has issued: If prior to issue of the Notice of AGM/EGM the Board decides it is inappropriate to proceed with the shareholder meeting as scheduled, that decision should be communicated by announcement and the company's website updated. Revised arrangements can be addressed then or in due course.

Notice of AGM/EGM has already issued: Adjournment or postponement of the meeting will need to be considered in the context of the company's constitution, applicable legal requirements and related matters. Similarly, the decision should be communicated by announcement and the company's website updated. Revised arrangements can be addressed then or in due course.

Venue: Be mindful of public health guidelines issued to reduce the risk of transmission, consider the proposed venue for the proposed meeting (noting recent restrictions on public venues – such as hotels), and seek to discourage physical attendance - encouraging proxy voting instead.

Formalities: Ensure that a chairperson and valid quorum will be present (with suitable contingent alternates), and that forms of proxy are suitably widely drafted (e.g. to cover proxy substitution and procedural as well as substantive business). The meeting ought be conducted in an efficient and business-like manner so as to take no more time than is necessary to deal with the formal business of the AGM or EGM.

Communications: Consider appropriate communications to shareholders where changes to the meeting format are required after the notice of meeting has been despatched.

Compliance: Ensure that actions taken are compliant with the company's constitution and applicable legal requirements.

QE2: *What are the implications of COVID-19 in relation to annual share awards?* UPDATED

AE2: Companies need to consider the impact of market conditions on the operation and management of their share plans. Not all businesses will be affected the same way by COVID-19 so there is no "one size fits all" approach. In general, how companies approach equity arrangements very much depends on the performance of their business, the terms of their equity plans, listing location and investor sentiment.

Many companies will have just granted, or be about to grant, new awards. A key question for Remuneration Committees is what can - or should - they do in respect of new equity awards? Remuneration Committees need to consider whether to delay awards or adjust targets. Their choices

will also depend on the terms of the share plan. Any exercise of discretion by the Remuneration Committee in relation to adjustments will be subject to investor scrutiny and needs to be approached carefully, particularly for awards at an early stage in their performance period.

For companies which are still in the process of making awards, they may wish to delay these decisions, at least temporarily, until there is greater clarity on the short to medium term effects of the COVID-19 crisis on their business. They may also look at a reduction in the level of grants, where those grants are priced off today's depreciated share price. Awards over an unusually large number of shares may lead to windfall gains where the share price recovers, so the scope for future adjustments should be hard-wired into awards. A move away from shares towards cash-based grants or phantom shares/share appreciation rights will reduce the impact of volatile markets, where current plans provide for this. However, cash preservation is currently high on the agenda for most PLC boards, so this may also not be attractive.

For current "in-flight" or outstanding awards already granted, companies will most likely simply want to wait and see. By the end of the current financial year there will be a better overview of the impact of the current volatility on executive awards and on the business as a whole. Remuneration Committees need to exercise caution in the use of any discretion and review the terms of the share plan carefully.

In its statement on the governance impact of COVID-19 (available here) Glass Lewis have addressed their expectations around compensation, warning that neither workers nor executives should expect to be worth as much as they were before the crisis, that any proposals to make executives whole at the further expense of shareholders will be rejected, and that there is now a *"heavy burden of proof for boards and executives to justify their compensation levels in a drastically different market for talent"*. They emphasise the importance of disclosure and the needs for boards to proactively seek changes that align with employee and shareholder experiences *"recognising that executives might need to take a pay cut."*

QE3: *What are the implications of COVID-19 in relation to employee share schemes?*

AE3: In respect of all-employee plans, companies should be mindful of the broader employee base becoming nervous of contributing funds to buy shares given market volatility and potentially looking to exit share plan participation. Companies cannot give any investment advice but consideration could be given to freezing plans or allowing contribution holidays, provided that the plan terms allow for this. Communication to the broader employee cohort will be key.

Also there may be operational issues arising in the context of the administration of share plans in the context of remote working arrangements. Make an assessment of whether additional time is required in respect of commitments to deliver shares or whether there are additional data protection security measures required.

Share plans are often one of the first employee benefits to pose a challenge for employers in volatile or recessionary periods, and while not the most immediate priority, keeping employees and executive teams motivated and engaged as they work through challenging conditions will come into greater focus as time goes by. Again, a short-term wait and see approach might be the preferred option for many Remuneration Committees, albeit this will not be possible indefinitely.

QE4: *What are the implications of COVID-19 in relation to Defined Benefit (DB) pension schemes?*

AE4: There are a number of risks specific to DB schemes which arise in the context of a possible liquidity shortfall for the Company. Subject to the rules of the scheme and any agreement with the members/scheme trustees, it is essential that companies maintain compulsory contributory obligations as trustees are obliged to report a missed payment to the Pensions Authority and a new funding plan, on significantly more onerous terms, may then have to be submitted. Companies should also review any funding agreement or contingent assets in case a default is triggered as a result of any company actions. Maintaining dialogue with DB trustees is also essential so as to mitigate the risk of adverse pre-emptive action by trustees.

QE5: *What are the implications of COVID-19 in relation to Defined Contribution (DC) pension schemes?*

AE5: Subject to the rues of the scheme and any agreement with the members/scheme trustees, it is also essential that companies maintain compulsory contributions to DC schemes and that these are made on schedule. Failure to maintain scheduled contributions, or failure to pay on employee contributions that have been deducted to the scheme is an offence under the Pensions Act. DC Trustees may make a report to the Pensions Authority in the event of late, missed or incorrect contributions.

QE6: *What flexibility is there is relation to corporate governance approach or disclosures generally at this time?* UPDATED

AE6: Our 'Board Business' publication on 20 March, 2020 addressed some of the arrangements which can be put in place in relation to board meetings, and included some suggestions in relation to consideration of the impact of COVID-19.

To date there seems to be little flexibility from institutional investors in relation to their expectations around governance. On 18 March, 2020 BlackRock confirmed their continued expectation for strong governance and practices during the COVID-19 pandemic, announced new KPIs for public companies and indicated their intention to link performance against these KPIs to their voting decision for or against boards and individual directors. The BlackRock statement is available here.

In terms of the approach to key governance aspects such as ESG, Glass Lewis has noted the need for investors to exercise pragmatism in light of the COVID-19 crisis, balancing demands or expectations for resource-intensive actions or reporting that would undermine the ability of companies to respond to more immediate concerns that are also in shareholders' interests. Glass Lewis itself has said it intends to apply discretion and pragmatism on a case by case basis, in lieu of updating its guidelines for new issues or novel approaches.

The FCA has indicated that it expects part of the contingency plans companies will put in place to enable them achieve their corporate reporting deadlines may be de-prioritising non-essential parts of the Annual Report.

Clearly companies will have to balance the expectation of their investors with their available resources.

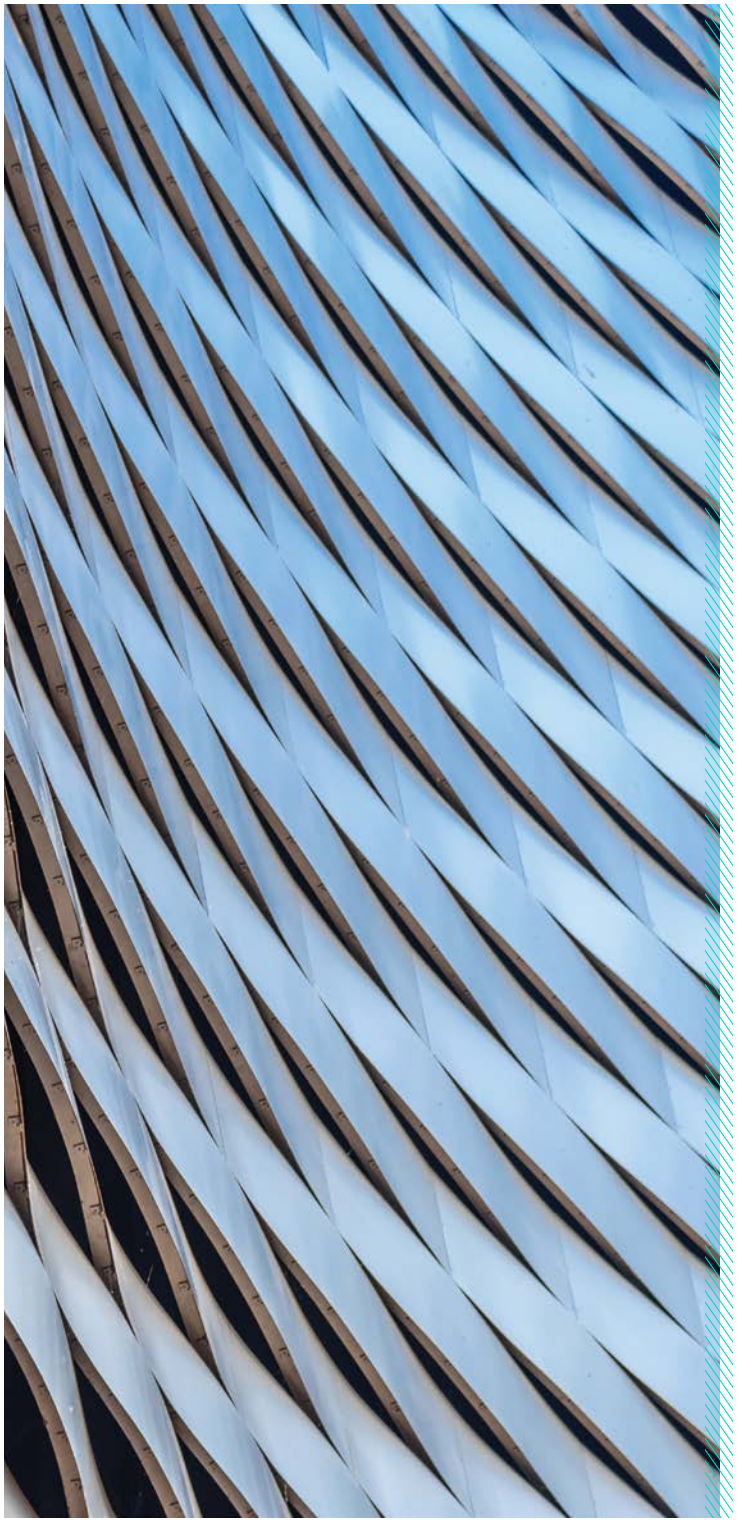
QE7: *Has there been any change in relation to the responsibilities of Shareholders around notifications of interest?*

AE7: There has been no change in the notifications of interest obligations.

QE8: *What else?*

AE8: The European Union (Shareholders' Rights) Regulations 2020 (S.I. No. 81 of 2020) (the Shareholders' Rights Regulations) have now been published and are due to come into effect on 30 March 2020. The Shareholders' Rights Regulations will implement the Shareholder Rights Directive 2017/828 (SRD II) in Ireland. Member States were required to transpose SRD II into national law by 10 June 2019 so implementation here is overdue. SRD II amends the (original) Shareholder Rights Directive (2007/36/EC) and also amends and supplements a number of provisions contained in Part 17 of the Companies Act 2014 (relating to PLCs and Societas Europaea). The aim of SRD II is to seek to ensure increased transparency and accountability and to encourage long term shareholder engagement in traded / listed companies.

A&L Goodbody will be issuing a note on SRD II in the coming days which will be available on the ALG website.



Planning Transactions

QF1: ***What are the key areas we should aware of in relation to planning of transactions at this time?***

AF1: We have dealt with the impact of COVID-19 on past transactions, any currently being implemented and possible future transactions in a separate Edition.

Court closures will clearly impact a range of transactions (eg. public company takeovers including schemes of arrangement, cross border mergers, capital reductions and certain asset/liability portfolio transfers) and impede the ability of companies to seek injunctive relief.

QF2: ***We plan to engage with our corporate lenders in relation to covenant relaxation/extension of deadlines for delivery of information/force majeure/trigger events etc. What are the regulatory limitations around this engagement?*** UPDATED

AF2: In the first instance companies will need to consider the possible price sensitivity of the fact of engagement with lenders. This will clearly depend on the nature and necessity of the 'asks' of lenders, and the position the company will be in, in the event of a refusal.

The type of information to be provided to lenders in the context of any such discussions will also need to be considered.

In general terms, it is possible for a company to engage with lenders and other parties in relation to a possible transaction and to selectively disclose inside information under MAR. It is essential however that all MAR aspects are fully and carefully considered in advance of any interaction and all necessary protocols (eg. Confidentiality Agreements etc) are put in place.

From a commercial perspective and to the extent your lenders are subject to the oversight of the PRA, it is noteworthy that the PRA has urged lenders to consider carefully their responses to potential breaches of covenants arising directly from the COVID-19 pandemic and its consequences. Where those uncertainties are of a general nature or are firm-specific but unrelated to the solvency or liquidity of the borrower, they have stated that they would expect lenders to consider the need to treat them differently compared to uncertainties that arise because of borrower specific issues and in doing so consider waiving the resultant covenant breach. The PRA advise they expect lenders to provide such waivers 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. The PRA letter to CEOs of lending firms is available here.

QF3: ***We will need to engage with bondholders in relation to covenant relaxation/extension of deadlines for delivery of information/force majeure/trigger events etc. What are the regulatory limitations around this engagement?***

AF3: As for QF2, this can be permitted under MAR subject to a number of conditions being met. However in the case of bondholders, and depending on how the bondholders may be organised, the use of a market soundings regime under MAR to wall-cross bondholders may be optimal. Where properly conducted, it provides the company with a safe harbour under MAR in respect of the selective disclosure of inside information.

QF4: ***A significant shareholder has contacted us to say that they need to exit their position immediately. Can the company purchase these shares?***

AF4: This will need very careful assessment on a number of fronts including previous announcements by the company, the magnitude of the stake, the share buy back authorisations which the company has in place, where the company is relative to its financial reporting calendar, information which the company may have access to at a point in time which is not yet in the public domain, and the manner in which any such buy back might occur (eg. it would need to be conducted 'on-market').

Any response to a shareholder should be neutral and non-committal. You should then seek the advice of your broker/financial adviser and legal adviser.

QF5: ***Our share price is in free fall, and no longer reflecting our fundamentals. We have sufficient distributable reserves, ample cash and covenant headroom and valid buyback authority. What would we need to do to commence share buybacks?***

AF5: Adaptation of the terms of existing share buyback programmes or reactivating buyback programmes has been a feature of a number of announcements in the UK market in recent days.

In general terms, repurchasing shares requires that the company is not in possession of any inside information, although it is also possible to appoint a third party to repurchase shares under a programme (while not in possession of inside information) and for those repurchases (where decisions are made independently of the repurchasing company) to occur notwithstanding any subsequent closed or prohibited period.

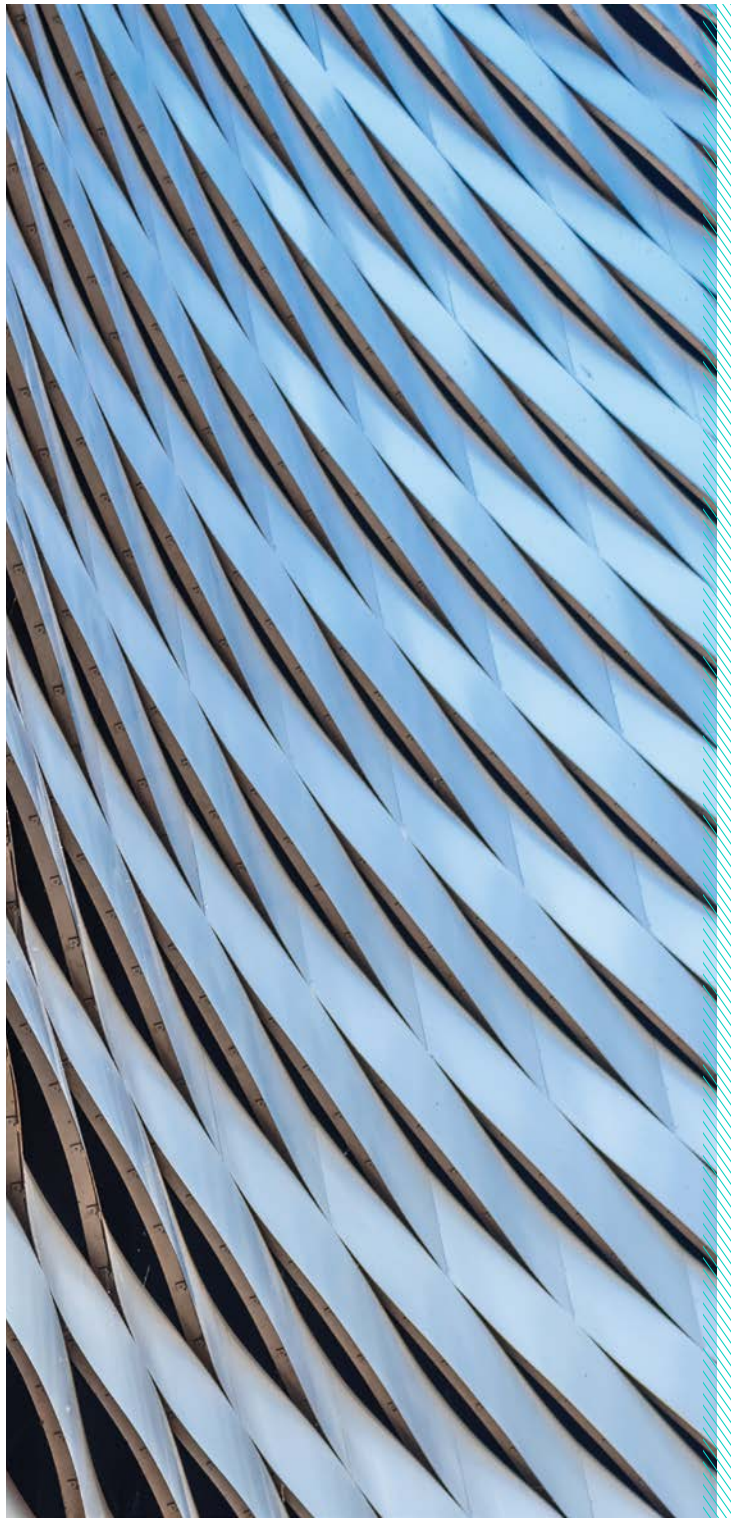
Therefore the first step in any considerations relation to repurchase of shares needs to be an assessment of the position of the company under MAR. Secondly a company would need to consider the prevailing uncertainties in relation to COVID-19 and have regard to the interests of all shareholders in conducting repurchases. For many companies, current uncertainties will be of too high a level to enable an informed assessment of the merit of a share buyback programme or to inform appropriate parameters to inform any such repurchases.

Consultation with your broker/financial adviser and legal adviser is recommended.

QF6: ***Given the evolving circumstances, it may be necessary for the company to seek to implement a transaction in a time frame which would not accommodate shareholder approvals, even where the transaction is such that shareholder approval would normally be required under the rules of the market on which securities are quoted. Is there any flexibility around the requirement for shareholder approval?*** UPDATED

AF6: There is some scope for avoiding the necessity for shareholder approval of certain types of transactions but only in extreme circumstances (for example where the survival of the company is at stake) and only following consultation with the relevant regulator. If this situation may be applicable, early consultation with your sponsor/nominated adviser or Euronext Growth adviser, and your legal adviser, is recommended.

For companies with a premium listing on the Main Market in London, the FCA have now announced (the statement is available here) that companies can apply for a dispensation from the requirement to hold a general meeting in respect of a class 1 transaction or a related party transaction. However to receive such a dispensation, they will need to have obtained, or will need to obtain, written undertakings from shareholders (who are eligible to vote in respect of the relevant transaction) that they approve the proposed transaction and would vote in favour of a resolution to approve it if a general meeting were to be held. The choreography of this, in terms of interaction with shareholders and market announcements, will entail some complexity and risk and it we think it may be most useful to companies with a more concentrated shareholder profile. It appears that the obligation to prepare a disclosure circular in respect of the transaction, and to have it formally approved by the FCA, will still apply.



QF7: ***We are considering raising equity to improve our liquidity and ensure our ongoing viability. What are the limitations around this?*** NEW

AF7: We have prepared a checklist in relation to a placing (being the equity funding structure capable of most rapid implementation) which is available on the ALG COVID-19 hub.

One recent and significant development in relation to placing limits in recent days is the statement from the Pre-Emption Group. This is available here. They have indicated that, up until 30 September, 2020, investors should consider supporting companies seeking to raise equity (on a non-pre-emptive basis) in respect of up to 20% of the issued share capital (rather than the usual 5% issuance for cash and a further 5% in connection with a specified acquisition or investment). There are a number of recommendations from the Pre-Emption Group in relation to how any such placing should be conducted, including that soft pre-emption is adhered to as far as possible and that management are involved in the allocation process.

There have already been a number of companies availing of this flexibility in the UK and it is expected to be an ongoing feature in certain circumstances.

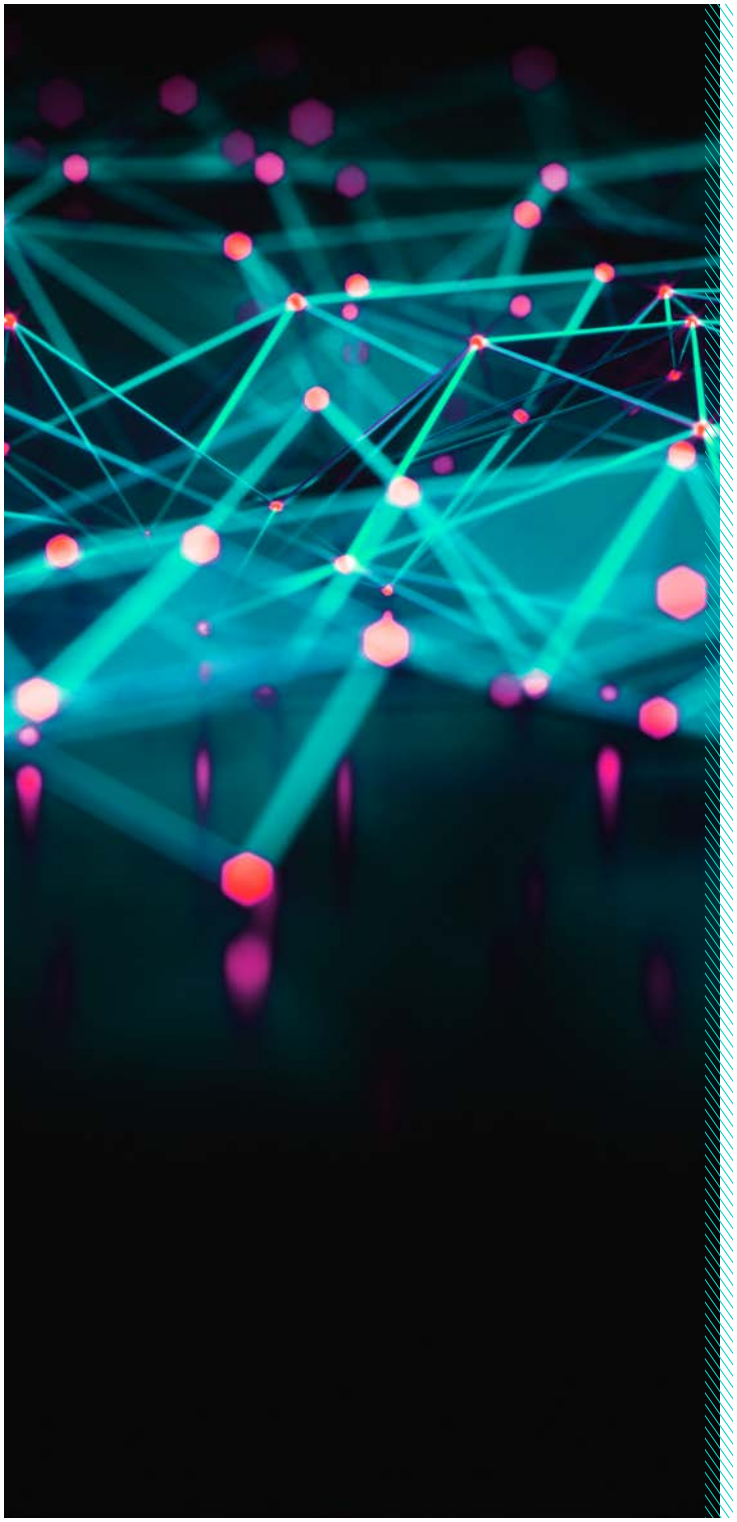
On 8 April, 2020 the FCA issued a statement welcoming the Pre-Emption Group approach but encouraging companies to contribute to delivering 'soft pre-emption rights' by ensuring they are consulted on, and direct bookrunners' allocation policies.

QF8: ***Our proposed equity issuance will require a prospectus (i.e. it will increase issued share capital by more than 20% or it will be a public offer (rights issue/open offer). Are there any accommodations in respect of COVID-19?*** NEW

AF8: Existing listed companies (listed for at least the prior 18 months) can avail of a short form prospectus, following consultation with the relevant competent authority. This document has lighter content requirements than in the case of a full prospectus. This is not a COVID-19 specific response but is already enshrined in the prospectus regulation regime.

On 8 April, 2020 the FCA issued a statement addressing the challenges posed by COVID-19 in respect of working capital statements (which are required to be included in a range of document types, including a short form prospectus). Essentially, the FCA will allow companies to disclose, in an unqualified working capital statement, their key assumptions in relation to business disruption as a result of COVID-19. In general, an unqualified working capital statement, which is an important assurance for shareholders, is not permitted to make any reference to the underlying assumptions, though it must have been prepared on the basis of a reasonable worst-case scenario. The FCA technical statement is available here.

For Irish companies preparing a prospectus, their competent authority will normally be the Central Bank of Ireland and not the FCA. While the FCA have indicated they are working with ESMA and relevant national competent authorities in Europe to agree a consistent approach, at the time of writing, ESMA has not issued an updated position with respect to working capital statements. Absent this, an Irish company preparing a document containing a working capital statement will need to consult with its relevant regulator in respect of that document to ascertain any COVID-19 flexibility. The implications of the FCA approach in terms of passporting of a prospectus into Ireland (which would be necessary to extend a public offer to Irish shareholders) is also not clear.



Possible Further Developments

QG1: *What rule changes/accommodations might we expect based on developments in other countries?*

AG1:

- There has been a ban on net short positions in each of the following EU countries, and in each case ESMA has issued a positive statement on the bans:
  - Spain – effective from 17 March, 2020 and effective until the end of trading on 17 April 2020
  - Italy – effective from 18 March, 2020 until the end of trading on 18 June, 2020
  - France – effective from 18 March, 2020 until the end of trading on 16 April, 2020
  - Belgium – effective from 18 March, 2020 until the end of trading on 17 April, 2020
  - Greece – effective from 18 March, 2020 until midnight on 24 April, 2020
  - Austria – effective from 18 March, 2020 until 18 April, 2020
- ESMA has stated that it continues to monitor developments in financial markets as a result of the COVID-19 situation and is prepared to use its powers to ensure the orderly functioning of EU markets, financial stability and investor protection.
- In the US, the SEC has issued an order providing for the possibility of a 45 day extension of certain filing deadlines for companies unable to make timely filings due to COVID-19 during March and April (available here). The SEC has also issued guidance regarding changing the time, date or location of shareholder meetings (available here).

QG2: *What other developments have there been in UK/ Ireland relation to listed securities?*

AG2:

- There have been reports that the London Stock Exchange is lobbying the Department of Business in the UK to amend the Companies Act 2006 to facilitate virtual AGMs.
- The CRO has issued a statement (available here) indicating that all annual returns due to be filed by any company now and up to 30 June, 2020 will be deemed to have been filed on time if all elements of the annual return are completed and filed by 30 June, 2020.
- In the UK Companies House has issued a statement (available here) indicating that companies who are not in a position to meet filing deadlines for their accounts should contact Companies House before the deadline and request an extension.

Euronext Dublin has indicated that in case of doubt as to the application of any provisions or guidance (including the above) with respect to COVID-19, Irish companies with securities listed/ traded in Dublin should contact the Regulation Team at Euronext Dublin.

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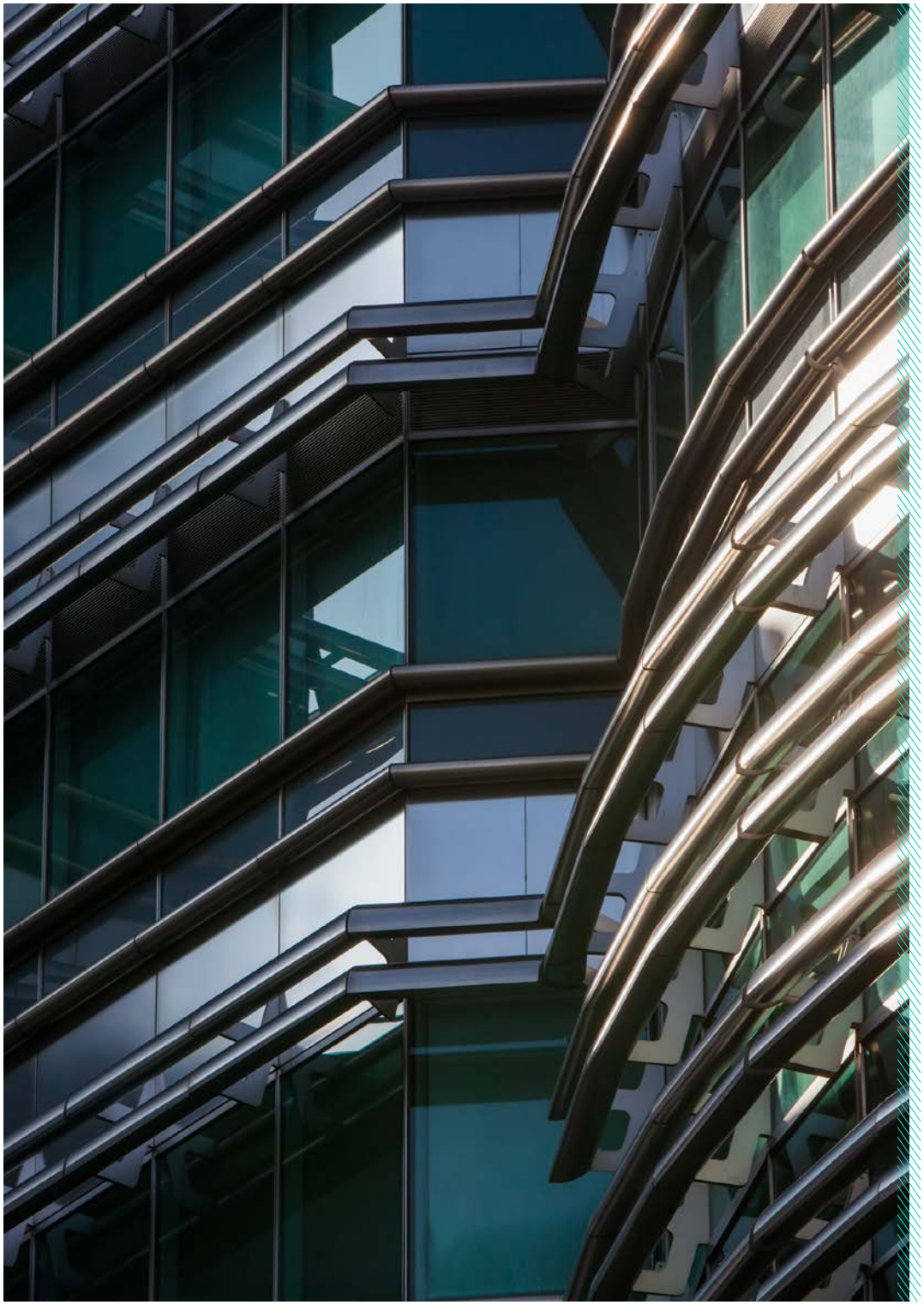
Additional Resources

The following publications of relevance to public companies have been issued to 25 March, 2020:

Glass Lewis	Glass Lewis Statement on the Effect of the Coronavirus Pandemic on Governance	26 March, 2020 NEW
FCA/FRC/PRA	Joint Statement by the FCA, FRC and PRA	26 March, 2020 NEW
FCA	FCA Policy Statement for Listed Companies on recapitalisation issuances during COVID-19	8 April, 2020 NEW
FCA	FCA Technical Q&A in relation to delaying annual company accounts	26 March, 2020 NEW
FCA	FCA Statement of Policy on Delaying Annual company accounts	26 March, 2020 NEW
FCA	FCA Primary Markets Bulletin No. 27	17 March, 2020 UPDATED
FCA	FCA Statement on Short Selling Bans and Reporting	26 March, 2020
FCA	FCA Notice on Request to Company to delay forthcoming announcement of preliminary financial statements	21 March, 2020
FCA	FCA Technical Q&A in relation to preliminary financial statements moratorium	22 March, 2020
Committee of European Audit Oversight Bodies	CEAOB to Auditors in the context of COVID-19	25 March, 2020 NEW
Pre-Emption Group	Pre-Emption Group expectations for issuances in the current circumstances	1 April, 2020 NEW
ESMA	ESMA Public Statement on actions to mitigate the impact of COVID-19 regarding publication deadlines under the Transparency Directive	27 March, 2020 NEW
London Stock Exchange	Temporary Changes to Dividend Procedure Timetable	25 March, 2020 NEW
ESMA	ESMA Notification requiring net short position holders to report positions of 0.1% and above	16 March, 2020
IAASA & ESMA	IAASA re-publication of statement from ESMA on reporting and financial information relating to the impact of COVID-19	11 March, 2020
AIM	Inside AIM Coronavirus – Temporary Measures	20 March, 2020
FRC	FRC Guidance for Companies on Corporate Governance and Reporting	26 March, 2020 NEW
FRC	FRC Guidance for Auditors in relation to COVID-19	26 March, 2020 NEW
Prudential Regulation Authority	Letter from Sam Woods 'COVID-19: IFRS 9, capital requirements and loan covenants' to CEO's of UK Banks	26 March, 2020 NEW
FRC	Inside AIM Coronavirus – Temporary Measures for publication of annual audited accounts	26 March, 2020
FRC	Guidance on Audit issues arising from the COVID-19 pandemic	16 March, 2020
FRC	FRC Advice to companies and auditors on Coronavirus risk disclosures	18 February, 2020
ICSA	Guidance Note on AGMs and the impact of COVID-19	18 March, 2020



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Information in this note is stated as of 8 April, 2020. The situation is evolving and further subsequent updates from key regulators /market stakeholders are likely.

All of the updates/regulatory recommendations referred to in this note will not be mandatorily applicable to Irish companies. However given the importance of the UK as a locus for shareholders and the location of trading, companies may choose to have regard to the requirements applicable to UK registered companies. Specific advice should be sought.

You will find a full range of timely materials for businesses in our dedicated **COVID-19 HUB** on our website.

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