

Technical Supplement – modification of general meeting requirements under the Listing Rules

In our [Statement of Policy](#) published on 8 April 2020, we explained that we are applying modifications to the requirements in relation to general meetings under the Listing Rules.

During the coronavirus crisis, issuers may be facing challenges in holding the general meetings which are required in a number of instances under the Listing Rules. In particular, the notice period for general meetings adds to transaction timetables and might also jeopardise an issuer's ability to complete critical fundraising transactions quickly.

To address the challenges faced by issuers and to alleviate the time constraints imposed by the notice period during this difficult period, we are proposing to temporarily modify our Listing Rules on a case by case basis in the circumstances described below.

Scope of the policy

This technical supplement applies in relation to two instances in the Listing Rules where a premium listed company is required to obtain shareholder approval for a transaction. This requires the convening of a general meeting. The two instances are:

- Class 1 transactions (LR 10.5.1R(2)); and
- Related party transactions (LR 11.1.7R)

Conditional dispensation available

Premium listed companies undertaking a transaction within the scope of this policy (see above) may apply to the FCA for a dispensation from the requirement to hold a general meeting. Dispensation will be granted on a case by case basis in relation to each transaction subject to the two conditions below being met.

The FCA considers it appropriate to grant the dispensation only in the circumstance where these two conditions are met:

1. the issuer has obtained or will obtain a sufficient number of written undertakings from shareholders (who are eligible to vote under the Listing Rules) that they approve the proposed transaction, and would vote in favour of any resolution to that effect at a general meeting were it to be held, to meet the relevant threshold for obtaining shareholder approval; and
2. the issuer provides written confirmation to the market that it has obtained sufficient written undertakings to meet the relevant threshold to pass the resolution(s) and, subject to the dispensation being granted, is not proceeding with a general meeting. This could be included in the relevant FCA-approved explanatory shareholder circular and accompanying announcement via a regulatory information service (RIS). Alternatively, if sufficient written undertakings to meet the threshold have not been obtained at the time the circular is sent to shareholders, it could be included in a subsequent announcement (see below).

Issuers should retain the written undertakings from shareholders and present them to the FCA if requested.

Issuers who wish to take advantage of this modification should apply to us in writing using the procedure set out in LR 1.2.2R, providing confirmation in sufficient detail that they have obtained, or will seek to obtain, sufficient undertakings from shareholders. They should not include the written undertakings with their submission and we do not intend to inspect them unless necessary. We would encourage issuers or their sponsors to consult with the FCA at the earliest possible time.

Two methods for achieving shareholder approval

The conditions above provide for two different methods by which issuers can obtain shareholder approval for transactions.

1. Where an issuer has already obtained written undertakings from a sufficient number of shareholders when the circular is published.

In this case, the transaction can complete once the circular has been published (subject to the satisfaction of any other conditions which may apply).

2. Where an issuer is yet to obtain written undertakings from a sufficient number of shareholders at the point at which the circular is published.

In these cases, when a sufficient number is obtained, the issuer should release an additional announcement via the RIS announcing that a sufficient number of shareholder undertakings have been received.

The transaction can complete at the point at which the additional announcement is issued (again, subject to the satisfaction of any other conditions which may apply).

Material changes

All issuers should continue to comply with the Listing Rules requirements where there is a material change to the terms of the transaction after obtaining shareholder approval but before the transaction has completed (LR 10.5.2R for class 1 transactions and LR 11.1.7AR for related party transactions).

For companies using this dispensation, this would mean re-running the process of gaining shareholder undertakings. Either method set out above could be used.

Other rules remain in force

We remind issuers that they should continue to observe all other applicable Listing Rules in full, irrespective of whether they ultimately convene and hold a general meeting. In particular, issuers should continue to comply with their obligation to make a notification via an RIS and to send an FCA-approved explanatory circular to their shareholders. They should also engage with shareholders to ensure they are appropriately informed and aware of issuers' actions.

It is also important to note that the Market Abuse Regulation (MAR) remains in full force and must be observed when this dispensation is being used. For example, it is possible that in some circumstances individual shareholder undertakings could be inside information. In particular, where a transaction is announced and shareholder circular published without sufficient shareholder undertakings having been received (method 2 above), the ultimate success or failure of the transaction could turn on individual undertakings being received. These undertakings might not arrive at once. All parties must consider the application of MAR carefully and whether they have inside information and, if so, their obligations in relation to it.

This policy does not in any way remove an issuer's obligations under the Listing Rules to appoint a sponsor or obtain its guidance on our requirements.

Services provided by a sponsor in relation to a class 1 transaction or a related party transaction remain a 'sponsor service'. As such, sponsors should continue to meet their obligations to the FCA in relation to transactions where a dispensation from the general meeting requirements is sought.

This policy is intended to be temporary while the UK faces the extreme disruption of the coronavirus and its aftermath. Where issuers have provisions in place to provide for holding virtual general meetings, we continue to support this as a means for gaining shareholder approval. We will keep the application of this policy under review.

Q and A

Does this modification impact my obligations concerning general meetings outside of the Listing Rules?

No. This policy only applies to an issuer's obligations under the Listing Rules. We encourage issuers to seek legal advice or speak to their sponsor if in doubt.

Do I still need to convene a general meeting when sending the explanatory circular to shareholders?

This question is only relevant for the second method outlined in the Technical Supplement. Where the issuer has not yet obtained the requisite number of shareholder undertakings when the circular is sent to shareholders (per LR 13.2.10R), we would still expect the explanatory circular to be accompanied by a notice of general meeting (LR 13.8.8R(1)).

Where further shareholder undertakings are received before the date of the general meeting and the relevant threshold is met, issuers may decide not to proceed with holding the meeting subject to and in accordance with applicable legal requirements. Issuers undertaking a class 1 transaction should still comply with our requirements for supplementary circulars (LR 10.5.4R).

For transactions that are undertaken via the first method, we would not require the circular to be accompanied by a notice of general meeting where sufficient shareholder undertakings have already been obtained before the FCA approves the circular.

In either scenario, the circular should include a clear explanation of the issuer's intentions around convening a general meeting and how it is applying the modification.

Where I am following method 1 above and no general meeting is being convened, should the resolution I would have put to shareholders at a general meeting - had I convened one - be included in the shareholder circular?

Yes. This should be included. This is so that all shareholders can see what has been approved by those shareholders who have provided written undertakings prior to the circular being published.

Do any restrictions apply to the written undertakings from shareholders?

Issuers may only take into account written undertakings from shareholders who would be eligible to vote on the resolution to approve the transaction. This would not include shareholders who are restricted from voting under our Listing Rules for related party transactions.

The written undertakings should also be clear and unequivocal and not subject to caveats – this may mean that some caveats giving shareholders the right to rescind the undertaking after a certain period of time or if material changes occur and which are currently included in some 'irrevocable' commitments used in the market at the moment would be unacceptable under this dispensation. However, shareholders should note that protections in our Listing Rules for 'material changes' apply (see above).

Proxy forms that have been completed and returned by shareholders for the purpose of the general meeting cannot be taken into account in establishing whether the threshold for approval via written undertakings has been met. In addition, written undertakings should not be given by proxies but must be given by shareholders.

Are there any changes to the Listing Rules content requirements for circulars?

We are not proposing any changes to our Listing Rules' content requirements for circulars in this policy.

In particular, we would still expect our requirements to be met, so far as possible, where the issuer is not convening a general meeting, including items that are linked to a shareholder vote in LR 13.3.1R(2), (3), (4) and (5). Circulars relating to a related party transaction should continue to include the 'fair and reasonable' statement (LR 13.6.1R(5)).

Does this modification of the requirements for general meetings apply to other circumstances where the Listing Rules require a general meeting?

No. This policy only applies to our requirements for class 1 transactions and related party transactions.