United Kingdom Equity Markets Association (UKEMA) response to the UK Secondary Capital Raising Review

1. Can and should the overall duration and cost of the existing UK rights issue process be reduced? In what ways?

The UKEMA believes that the duration of the current process can and should be reduced (as recommended by the Rights Issue Review Group in 2008), building on the reduction from 21 to 14 days that has been achieved since then. The UKEMA would support a further reduction to 7 calendar days and believes that (linked to our response to Q2), improved communication with shareholder and better technology would help to drive this ambition reducing unnecessary delay in companies receiving funds from shareholders. In addition, the cost of the existing rights issue process would be substantially reduced if a prospectus is not required. We are very supportive of the proposal from HM Treasury in the "UK Prospectus Regime Review", as set out in our response to that review, that companies whose securities are admitted to trading on stock markets should be exempt from the public offer rules and that there would also be an exemption from the public offer rules for existing shareholders. However, we note that the "admission to trading" rules would remain with the possibility that the current 20% share capital limit would be retained in rules governed by the Financial Conduct Authority. Our view is that 30% would be a more appropriate limit (see further comments on prospectuses below).

2. Should new technology be used in the process to ensure that shareholders receive relevant information in a timely fashion and are able to exercise their rights and, if so, how?

As above, there are opportunities to embrace new technology to support better engagement with shareholders, such as apps, portals and websites. However, we acknowledge that currently there are difficulties in doing this because of the intermediated securities chain and the obstacles experienced by listed companies in identifying the beneficial owners of their shares. Although some intermediaries, such as Hargreaves Lansdown, are able to identify beneficial owners there is no easy identification method and we encourage the Review to look further at this issue as new technologies will not work effectively with the current system. We understand that Australia has a system where an individual has a holder identification number allotted them by ASX enabling all shares the individual holds to be held in a designated account. This enables shareholders to receive notifications promptly and thus to participate in pre-emptive offers (see below).

3. Are there fund-raising models in other jurisdictions that should be considered for use in the UK? For example, the use of cleansing notices in lieu of prospectuses on secondary capital raisings in Australia and also the Australian ANREO, AREO (or RAPIDS), SAREO and PAITREO structures?

As with broader proposals for reforms that are being considered following the UK's exit from the EU, UKEMA members are open to learning from and adopting best practice from other jurisdictions where applicable and beneficial to the UK's circumstances and would welcome discussion to understand how specific processes and structures - such as those in Australia - might be applied to the UK.

We understand that the above are all types of entitlement offers, some of which also involve renounceable rights. Compared to a UK rights issue, all of them involve the listed issuer receiving funds much earlier as the offer is split into two tranches. The first tranche is open for a matter of days and is open to institutional investors only and the second tranche is open for approximately 4 weeks and is only open to retail. We suggest that these structures are analysed in more detail by the Review Group. Points we think are of particular interest are as follows:

Cleansing notices in lieu of prospectuses – our understanding is that a cleansing notice is issued at the end of the trading halt in order to avoid a prospectus and that this is the case for both placings and rights issues. The cleansing notice states that there is no material information that the issuer is aware of that has not been disclosed to the market under the continuous disclosure rules. We suggest that further research is needed into the Australian disclosure regime but in principle this seems like this approach could work well, particularly given the time and cost implications of producing a prospectus as set out above.

4. Has the greater transparency around short selling that was introduced after the financial crisis benefited the rights issue process and is there more that can and should be done in this area?

UKEMA members note issues that existed around transparency in short selling at the time of the financial crisis but are not aware of any specific concerns that continue to be raised and note that any further shortening in the number of days taken by the process of secondary capital raising would help to address any remaining issues that may arise.

5. Are there any refinements that should be made to the undocumented secondary capital raising process in light of recent experiences during the Covid-19 pandemic?

In UKEMA members' experience, the temporary increase granted by the Pre-Emption Group in April 2020 permitting disapplications of pre-emption rights of up to 20% of issued share capital rather than up to 10% worked well at raising money for companies swiftly and efficiently at a time of great stress for listed companies. UKEMA would support a permanent increase to 20%, which, in our view, if accompanied by greater emphasis on allowing retail shareholders to participate in placings would work well both for sell and buy side.

6. Are there any other recommendations or points made by the Rights Issue Review Group in 2008 that should be investigated further?

[We note that tt was a recommendation of that 2008 Review Group that there should be an open offer that runs concurrently with the general meeting notice period and that various suggestions were made as to how this could be done. We suggest that this is looked at again along with compensatory open offers.: We are aware of the Songbird and Lloyds Bank open offers but none have been done since then indicating perhaps that there is too much complexity around them? We suggest that compensatory open offers are examined again in the light of the new Australian structures highlighted above.

7. In what other ways should the secondary capital raising process in the UK be reformed?

In our view, consideration should be given to the following areas:

- **Prospectuses** – as set out in our response to HMT's UK Prospectus Regime Review (the "Prospectus Regime Review"), we are in favour of the proposal that issuers on regulated markets and MTFs should be exempted from the rules governing public offers of securities and that a prospectus should not be required for offers to existing shareholders, both of which would mean that a rights issue would not require a prospectus from a public offers perspective. However, we remain concerned that the admission to trading rules (to be set by the regulators) could require a prospectus and reiterate our position that a 20% admission to trading threshold is too low and 30% would be more appropriate. In addition if a prospectus is required for a rights issue we suggest that a shorter format would be appropriate (whilst noting that various attempts to do this have so far proved unsuccessful – we think that this could be looked at again). We acknowledge that a shortened format is not suitable for rights issues at the larger end of the market where there is likely to be a requirement for an offer into the United States and hence a 10b-5 disclosure letter but the smaller companies that the UK EMA represents rarely do such offerings due to their size. We therefore encourage the Review to consider a shorter format prospectus for smaller offerings and companies.
- **Retail investors** – we are very much in favour of Objective 1 as set out in the Prospectus Regime Review and are of the view that the secondary capital raising process should be re-evaluated with the needs of retail investors in mind and the need to widen participation in offerings as a goal for this review.
- **Overlapping statutory regimes** – we have concerns that other statutory regimes, particularly the financial promotion regime, do not make the capital raising process easy. The financial promotion regime means that issuers seeking to offer securities to retail (which should be encouraged as set out above) need to have announcements approved as financial promotions as there is not usually a suitable exemption which means additional complexity and an onerous obligation for the bank involved. Further consideration could be given to other ways of addressing the concern behind the legislation such as disclaimers, bearing in mind that there are also other liability regimes set out in FSMA for misleading statements. In addition, we note that other jurisdictions such as Australia do not appear to have a financial promotion regime.

About the UKEMA:

About the UK Equity Markets Association (UKEMA)

The UK Equity Markets Association (UKEMA) is a newly established and growing group of small and mid-cap investment banks and equity brokerage firms (members are Peel Hunt, Shore Capital, Winterflood, Numis, Arden Partners, Stifel, Liberum and finnCap).

UKEMA members:

- Trade in over 2,000 companies shares (£28.8 trillion in value in the last 12 months), representing 57% of shares traded by volume, and 12% by value of all shares on the LSE.
- Are broker to 782 companies.
- Write research on over 1,700 companies' shares, representing 87% of all UK listed issuers.
- Have raised £6.7bn funds for companies in 2021 so far.

UKEMA looks to increase awareness of small and mid-cap equity investment brokers' value in supporting SMEs to access capital to reach their potential and improve regulation. Indeed, members interact daily with all retail intermediaries and private client wealth managers such as Hargreaves Lansdown, AJ Bell, Barclays Stockbrokers etc.

What does UKEMA do?

UKEMA's members work together to reduce market access barriers and help policymakers as they develop new frameworks to support and develop the regulation of equity markets. To do this UKEMA seeks to ensure domestic regulation provides appropriate protections without being overly burdensome in order to support public markets and the essential liquidity they provide.

UKEMA supports economic growth

Small and mid-cap equity brokerage firms help SMEs reach their potential, supporting the UK's post-pandemic economic recovery. UKEMA promotes solutions to allow UK equity markets to thrive, supporting the drive to grow the number of listed companies and increase competition, and helping to make the market more resilient to crises.