**Open offers**

This element explains the rules and regulations relating to open offers.

**What is an open offer?**

The FCA Handbook Glossary contains relevant definitions:

An open offer is ‘an invitation to existing securities holders to subscribe or purchase securities in proportion to their holdings, which is not made by means of a renounceable letter (or other negotiable document).*’*

**How is an Open Offer different from a Rights Issue?**

There are a number of key differences between an open offer and a rights issue. These include:

1. The method of the offer
2. Underwriting arrangements
3. The sale price of the shares
4. The timetable

These will each now be considered in turn.

**Open offer –v- Rights Issue:** **The method of the offer**

The offer to buy further shares is made to shareholders by means of an application form. The application form is non-renounceable and therefore cannot be traded (unlike a PAL in a rights issue).

Shareholders have no ability to sell the unpaid rights in the market and so lose their opportunity to benefit from any value attached to the entitlement (i.e. value that arises because the offer price is less than the prevailing market price), and therefore shareholders who do nothing will not be ‘compensated’ for the dilution of their holdings in the company.

As with a rights issue, a prospectus is required for an open offer as it is an offer of transferable securities to the public which will be admitted to trading on a regulated market and the various exemptions are unlikely to apply.

**Open offer –v- Rights Issue:** **Underwriting arrangements**

An open offer may be underwritten but the underwriter in an open offer will generally not provide any selling arrangements for ‘lazy’ shareholders who do not take up their entitlement to shares. If a shareholder fails to take up their entitlement, they will not receive anything under an open offer. This contrasts with the position in a rights issue. An open offer does not therefore give rise to a ‘rump’ or a ‘stick’ but, if underwritten, requires the underwriter to take up any shares which the existing shareholders do not accept.

 An open offer can be combined with a placing: this has the effect of reducing or eliminating the need for underwriting. On announcement, the conditional placees (institutional investor who may or may not be existing shareholders) commit to purchase shares not taken up by existing shareholders in the open offer.

**Open offer –v- Rights Issue:** **The sale price of the shares**

Under an open offer, the shares are also usually offered at a discount to the market price (i.e. the price at which the shares are currently traded on the LSE) to encourage shareholders to take up their shares. Historically, the discount offered under an open offer has been much smaller than under a rights issue (between 4% and 10% of the current market price), particularly where an open offer is combined with a placing. However, the UK Listing Rules allow greater discounts in certain circumstances.

**UKLR 9.4.13** provides that an open offer cannot be made at a discount of over 10% **unless**:

1. the terms of the offer at that discount have been specifically approved by the issuer’s shareholders; or
2. it is an issue of shares for cash under a pre-existing general authority to disapply **s.561 CA 2006**.

As pre-emption rights are often systematically disapplied in relation to open offers, it is technically permissible for shares issued under an open offer to be issued at a discount of more than 10%, although in practice 10% will usually still be the maximum.

**Open offer –v- Rights Issue:** **The timetable**

**UKLR 9.4.8** provides that an open offer must remain open for acceptance for at least 10 business days starting with the date on which the offer is first open for acceptance. This is the same as the requirement under **UKLR 9.4.6** for rights issues.

Note that, as the application forms are not tradeable instruments, they can be posted to shareholders on Impact Day if a GM is required (unlike for a rights issue, when companies have to wait until after the GM before making the offer to shareholders and posting the PALs).

Therefore, if a GM is required to approve the issue of shares under an open offer, the timetable for an open offer will generally be much shorter than the timetable for a similar sized rights issue which requires shareholder approval at a GM. The timetable on the next page assumes that the conditions of **ss.307A(2)-(4) CA 2006** are satisfied and that the notice period of the meeting can be reduced to 14 clear days (**s.307A(1)(a) CA 2006**).

**Open offer: Timetable**

1. Impact Day: (Day 0)

* Announcement made to RIS (UKLR 6.4.4(1))
* Separate circular (if used) and application form posted
* Prospectus approved and published

1. Earliest last date for acceptance and payment (at least 10 business days from when the offer is first open for acceptance). Where a GM is required, the open offer is generally left open until after the GM and all acceptances are made conditional on shareholder approval being obtained at the GM.
2. Date of GM (Day 17): (2 days’ posting (s.1147(2) CA 2006) & 14 clear days’ notice (s.307A(1)(a) & s.360 CA 2006) (provided a longer period not specified in the articles - s.307A(6) CA 2006).

[Diagram illustrating the above three points.]

**Open offer: What procedure must be followed?**

Other than the significant differences outlined previously, the procedure for an open offer is similar to that for a rights issue. Before issuing new shares under an open offer, a listed company must consider whether it needs to convene a GM to obtain the approval of its shareholders (as discussed in relation to rights issues) in order to grant authority to its directors to allot such shares.​

When making an open offer, a listed company once again has two options in relation to pre-emption rights:​

1. to comply with pre-emption rights by making a pre-emptive offer under s.562 CA 2006 (rare in practice); or​
2. to disapply pre-emption rights by passing a special resolution at a GM under s.570 CA 2006 (most usual in practice).

**Summary**

* An open offer is also an offer of new shares to existing shareholders pro rata to their existing shareholdings but (in contrast to a rights issue) not made by way of a renounceable letter.
* An open offer must remain open for acceptance for at least 10 business days from the date on which it is first open for acceptance (see UKLR 9.4.8). This is the same as the requirement under UKLR 9.4.6 for rights issues.
* Every shareholder receives a circular (often incorporated into the prospectus) explaining why the issue is being undertaken. Shareholders also receive an invitation to apply for shares using an application form. As the application form is not tradeable, it can be issued before all the conditions are satisfied (so it is not necessary to wait until after the GM has been held). The applications for shares by shareholders will then be subject to the conditions to the offer.
* If a shareholder does not wish to participate in the open offer, they cannot transfer the offer to anyone else and will not receive any premium for shares not taken up as there is no equivalent of UKLR 9.4.4 for open offers.