

DORMANT ASSET CONSULTATION: OUR VIEW

JUNE 2020



■ BACKGROUND

Over a decade ago, the government of the day decided to use dormant monies sitting in bank and building society accounts to help fund good causes and established an Act of Parliament that made this possible. Since then the Reclaim Fund has received over £1.2bn from bank and building society accounts declared dormant. Through the National Lottery Community Fund, over £600m has been released to good causes.

Then in 2015 the government created the independent Dormant Asset Commission whose remit was to consider expanding the existing successful scheme. They published their report in March 2017 which recommended the expansion of the scheme into a range of other financial assets including listed equities (securities).

Following the recommendations of the Commission, the government appointed several industry champions to spearhead conversations with each of their sectors and investigate how the expansion could be achieved. For securities, Robert Welch was appointed as the champion and worked with representatives from several FTSE companies, Computershare and the other major registrars, and other key sector organisations.

The industry champions published their blueprint for expansion in April 2019, which we covered in our briefing note that can be viewed [here](#). The Department for Digital, Culture, Media and Sport (DCMS) have now issued a formal consultation on the proposals. The deadline for responses to the consultation is **16 July 2020**.

This whitepaper will look at some of the key areas of the consultation and explain how they may impact UK companies with listed securities who choose to participate in an expanded scheme in the future.

■ ASSETS IN SCOPE

The assets that the government feel are within scope of the expanded scheme come as no surprise:

- Proceeds of shares as defined in section 540 of the Companies Act 2006
- Dividends as defined in section 829 of the Companies Act 2006
- Unclaimed proceeds from corporate actions (including those under section 981(6) or 981(9), and section 899.

The expanded scheme for the securities sector is being limited to UK registered public limited companies listed on the London Stock Exchange. Will this include AIM listed companies? We believe it will but are seeking confirmation.

There is no clear indication within the consultation that the government are considering including those securities held within corporate sponsored nominee arrangements. There is a brief acknowledgment that the industry champions identified FCA rules that would need amending to allow for participation, but the government does not go into any further detail.

They do make clear that they are looking at legislation amendments to allow use of the scheme, rather than following existing processes for the payment of monies to court.

■ DEFINITION OF DORMANCY

The consultation has recognised that, due to the different nature of the assets they are looking to introduce into an expanded scheme, definitions of dormancy will be variable based on the asset.

The DCMS have opted for a definition for the securities that in some ways departs from the previous recommendation of the industry champion and the sector working group.

Industry Champion's definition	Consultation definition
<p>A period of no shareholder-initiated contact for 12 years and:</p> <ul style="list-style-type: none">> The shareholder has been identified as gone-away,> Where applicable, at least three dividends have become payable but have not been cashed.	<p>No transactions have been carried out or contact made in relation to the asset by or on the instructions of the asset owner for 12 years and:</p> <ul style="list-style-type: none">> In that period, the firm has made proportionate and reasonable efforts to reunite the asset with its owner, which have been unsuccessful; and> Where applicable, three distributions or other sums to which the person is or was entitled remain unclaimed or unpaid.

The proposed definition in the consultation may prove to be more challenging for companies or their agents by not clearly recognising the concept of a 'gone-away shareholder' as a trigger for dormancy and includes what the government intends to be a legal requirement to carry out proportionate and reasonable tracing.

Within the proposed definition the government is focusing on a concept of 'no transactions' having been undertaken or 'contact' made with the shareholder. This has the potential to be difficult to manage from an operational point of view, as some engagements with investors may fall outside of general data retention requirements and/or may not even get logged (e.g. a shareholder making contact directly with an issuer). This may make it difficult to satisfy the government's requirements, depending on how they are interpreted.

Thankfully, it is our current understanding that the industry will retain some ability to further define what is meant by a transaction or contact, enabling a workable and practicable solution to be implemented by the market. However, there remains the potential for differences by issuer or registrar based on the information available, which may prevent a harmonised approach across the sector as a whole.

The consultation also provides slightly different definitions of dormancy for distributions and corporate action proceeds. The government appear keen that the widest set of assets are available for inclusion in the expanded scheme, including those where existing legal provisions currently dictate how they are managed. For example, for participating issuers the expected legislation would over-ride existing rules on dividend monies becoming statute barred after 12 years, as well as rules relating to takeover proceeds held for dissenting shareholders that might otherwise be directed to the court after 12 years.

For Corporate Action proceeds the consultation proposes a dormancy definition linked to the date the consideration became payable, in line with the recommendation of the industry champion.

■ FULL RESTITUTION

The proposals seek to define what would happen if a former securities holder, whose assets have been declared dormant and transferred to the Reclaim Fund, subsequently makes contact and initiates a reclaim. The consultation invites feedback on the level of restitution that the former holder would be entitled to.

The industry champions recommended that to encourage companies to join the scheme, enhance customer protection and align participating organisations, full restitution should be defined as providing:

“... the full value of the shares at the point of reclaim, plus the dividends paid by the company on its shares, and, in certain circumstances, the value of any corporate actions between the point of sale of the shares and the reclaim...”

However, as the DCMS consultation makes clear, there is a desire to follow existing industry practices which are diverse when it comes to the approach to share forfeiture. Therefore, the consultation instead defines full restitution as:

“... the amount that would have been due to the asset owner had a transfer into the scheme not occurred.”

DCMS want the market to lead the way here and has said that the Reclaim Fund should be ready to reflect the practices of the participating company.

Therefore, if a participating company would otherwise allow a reclaim to be made based on the value of assets at the time they were forfeited or in this case declared dormant, then the Reclaim Fund would adopt the same approach. However, if another participating company decided to allow a reclaim based on the value of assets at the time a claim was made and not based on the time they were declared dormant, the Reclaim Fund would mirror that approach instead.

This potentially means that the method of calculating any reclaim value will potentially vary for each company participating in the expanded scheme. This creates a more complex scheme by not only significantly increasing the challenges for registrars, who are likely to support companies and their former investors in making a reclaim and storing the historic records and terms, it also means that investors who have held investments in multiple companies may well receive different treatment.

It should also be noted that in order to participate in the scheme the Reclaim Fund would require companies to enter into an agency agreement. The DCMS's view is that this agreement will likely require companies to confirm that should they subsequently cease their participation in the scheme, they would still commit to treating any shareholders of the same class of share as if they had been entered into the scheme. The view is that to do otherwise would cause a disparity between the treatment of shareholders.

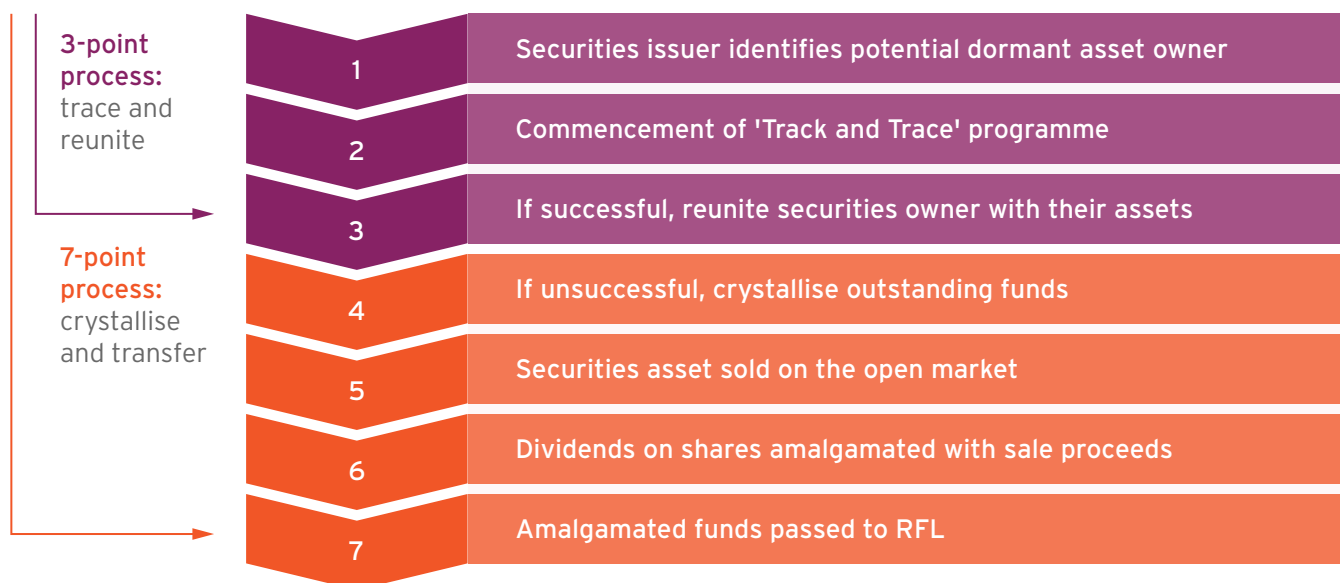
In that way, it could be said that the voluntary nature of the scheme only extends for the period before a company initially joins the scheme. Once an issuer participates in the scheme, they will subsequently be required to adhere to its principles even if they choose to exit the scheme, matching any reclaim logic and accepting the associated liability.

■ TRACING AND REUNIFICATION

In order to participate in the expanded scheme, tracing, verification and reunification is a fundamental principle. Therefore, the government is considering two new legislative requirements:

- Requiring participants to make proportionate and reasonable efforts, based on best practice within their sector;
- Strengthening the Reclaim Funds ability to decline transfers where they don't feel proportionate and reasonable efforts have been carried out.

As a sector we developed the 7-stage process (below) which was detailed within the Blueprint for Expansion report, and the Registrars continue to work on an industry guide for tracing considerations.



We need to understand more clearly what minimum requirements the Reclaim Found would expect in relation to tracing before accepting funds transferred into the scheme. This will permit the development of industry best practice guidance on managing dormant assets in a manner that conforms with the expectations of the Reclaim Fund.

■ WHAT'S NEXT?

We welcome your thoughts and comments before we submit a response to the consultation - you can email us [here](#).

The submission deadline is **Thursday 16 July 2020**.