

# BIA submission: UK Secondary Capital Raising Review November 2021



## Summary

Despite the UK's strength in life sciences, its public markets are not functioning as a rich source of capital to support the growth of the industry. As a result, UK companies are increasingly listing on Nasdaq rather than their home market. The cause of this is manifold but within the scope of this Review, the BIA has identified pre-emption rights as a significant impediment to secondary capital raising and a barrier to greater institutional investment in the sector.

Pre-emption rights are the requirement to offer new shares to existing shareholders before potential new investors. This slows down and increases costs of new capital raises, and in some cases can limit the quantum of attainable capital. This problem is exacerbated by the lack of understanding of the rules by US investors, as there are no such rules in the US. Overall, this disadvantages UK companies against their US competitors. The BIA recommends that UK companies be able to pass an enduring waiver of pre-emption rights for 5 years or longer to reduce the burden on companies and facilitate more efficient and rapid secondary capital raising on UK public markets.

## Introduction

The UK is a global pioneer in life sciences, with the Prime Minister recently recognising it as a sector of strategic importance through the Life Sciences Vision<sup>1</sup>. The sector has been in the spotlight over the last 18 months for the crucial role it has played in developing an effective vaccine against COVID-19 and for the extensive genomic sequencing programme carried out to rapidly identify variants of concern, understand transmission, and inform policy to slow the spread. Our industry has only been able to respond so robustly and efficiently due to continuous public and private investment in life sciences which has contributed to the building of a hugely successful sector. Maintaining and increasing this investment is critical to the future health and wealth of the UK.

In 2019, the sector employed over a quarter of a million people across the UK, generating a turnover of £81 billion.<sup>2</sup> These highly skilled jobs are spread out across the four nations, with two-thirds outside London and the South East.<sup>3</sup> The growing sector is made up of 6,300 companies, 80% of which are SMEs.<sup>4</sup> Start-ups and SMEs are the catalysts that will disrupt global markets and established companies and as a result, drive economic growth. In the first nine months of 2021, UK life sciences SMEs raised almost £3billion in equity finance, showing the sector is on the cusp of a golden age.<sup>5</sup>

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<sup>1</sup> Department for Business, Energy and Industrial Strategy (2021), *Life Sciences Vision*: <https://www.gov.uk/government/publications/life-sciences-vision>

<sup>2</sup> Office for Life Sciences (2021), *Life Sciences Competitiveness Indicators 2020, Annual report on the UK life science sector*: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/977265/Life\\_Science\\_Competitiveness\\_Indicators\\_2020\\_report.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/977265/Life_Science_Competitiveness_Indicators_2020_report.pdf)

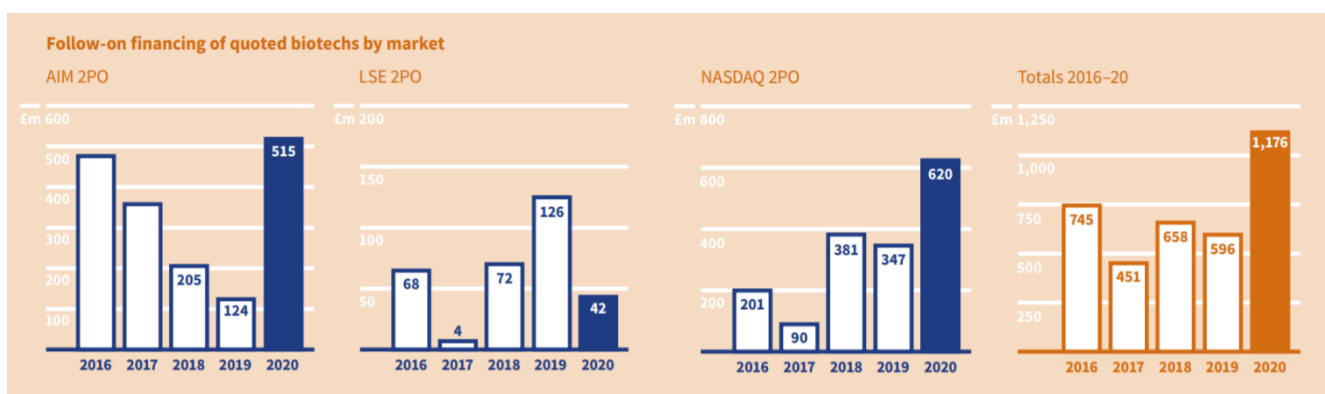
<sup>3</sup> PwC (2017), commissioned by BIA, ABPI, BIVDA and ABHI, *The economic contribution of the UK life sciences industry*: [https://www.abpi.org.uk/media/1371/the\\_economic\\_contribution\\_of\\_the\\_uk\\_life\\_sciences\\_industry.pdf](https://www.abpi.org.uk/media/1371/the_economic_contribution_of_the_uk_life_sciences_industry.pdf)

<sup>4</sup> Office for Life Sciences (2019), *Bioscience and health technology sector statistics 2018*, p. 4: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/910590/Bioscience\\_and\\_Health\\_Technology\\_Statistics\\_2019.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/910590/Bioscience_and_Health_Technology_Statistics_2019.pdf)

<sup>5</sup> Bioindustry Association (2021), *UK biotech sector enjoys record year of investment*: <https://www.bioindustry.org/news-listing/uk-biotech-sector-enjoys-record-year-of-investment.html>

## Secondary capital markets for life sciences in the UK

Investment in biotech SMEs boomed in 2020, in the UK and globally, largely due to the spotlight on the sector and the success of its work tackling COVID-19. The closing down of other sectors of the UK economy also likely redirected capital towards life sciences. Overall, £2.8bn was raised by UK biotech and life sciences SMEs in 2020. £1.18bn was raised through secondary capital financings, £1.39bn was venture capital, and only £244m was raised in initial public offerings<sup>6</sup>. This proportion has been relatively consistent over the past five years, even as the overall quantum has increased. However, the source of secondary capital has changed substantially. As the chart below shows, there has been a gradual reduction in capital raised on London's AIM, and a corresponding increase in capital raised by UK HQ'd companies on Nasdaq. Last year (2020) was, however, an unusual year for biotech on AIM, with almost every company raising, leading to a large overall quantum raised on the market. That notwithstanding, AIM and the Main Market are not considered by the UK biotech and life sciences sector as particularly rich sources of investment. As a result, UK companies are increasingly listing on Nasdaq rather than their home market.



We do not recognise fundraising rules as the driver of this growing disparity between London and Nasdaq. We believe investor appetite for life sciences, especially the pre-revenue part of the market, as the fundamental flaw. Unlike the US, the UK does not have a large enough community of investors willing to back life science companies nor the analyst coverage to drive trading, resulting in poor liquidity and unfavourable fundraising conditions.

However, we have identified pre-emption rights as a significant and unnecessary barrier to secondary capital raisings, which disadvantages UK companies against their US and US-listed competitors. If the UK is to have a properly functioning public market for life sciences and biotech, this problem must be overcome alongside other efforts to increase investor appetite for the sector<sup>7</sup>.

## Pre-emption rights and their impact on secondary capital raising

The pace at which companies can raise money is extremely important, as those that can move quickly are able to take advantage of favourable market conditions or good news that has positively impacted the business' share price, such as a successful clinical trial result.

Pre-emption rights, which give "first refusal" to existing shareholders in new share issues, significantly slow down the process of raising new capital and increase costs and demand on human resources within the business. Many public life science and biotech companies are small, pre-revenue and in the R&D phase of

<sup>6</sup> BioIndustry Association (2021), *The Science of Success: UK biotech in 2020*: <https://www.bioindustry.org/resource-listing/the-science-of-success-pdf.html>

<sup>7</sup> The BIA is a member of the Life Sciences Scale-Up Taskforce, chaired by Rt Hon Kwasi Kwarteng MP, which is developing recommendations to increase investor appetite.

their development, meaning the additional demands created by pre-emption rights have a detrimental impact on the business and its ability to raise capital.

UK companies seek to address this problem by passing a resolution at their Annual General Meeting whereby shareholders waive their pre-emption rights over a set percentage of the issued share capital. (E.g. a company with an issued share capital of 100m shares could pass a special resolution at the AGM waiving pre-emption rights over 20% of the share capital, allowing it to issue up to 20m shares directly to new shareholders without first having to offer them to existing shareholders.) This is a burden in itself, especially as such resolutions are often contested. Moreover, it disproportionately impacts life sciences businesses, as they must raise large amounts of capital but generally have small market capitalisations, so the percentage of new shares issued in raises must be higher than in other sectors.

Most life sciences and biotech companies are burning cash due to their high R&D spend and need to annually seek a pre-emption waiver over 20% of their share capital, or more. The Investment Association's Share Capital Management Guidelines<sup>8</sup> state that the disapplication of pre-emption rights should not exceed 10% - with 10% being an exception for an acquisition or specified capital investment. Institutional Shareholder Services (ISS) use this guideline to assess AGM resolutions and make recommendations as to whether to support or to vote against. The ISS take no account of the stage of the business, or nature of the business spend that is causing the cash burn and our members report that the ISS always recommend voting against anything that exceeds 10% in total. Moreover, for UK-quoted companies, their US shareholders often don't understand pre-emption rights, as there is no concept of them in the US, and are reluctant to waive them until they understand them. This means UK companies must conduct a lot of outreach to investors to secure their voting support. This is hard work and is something that US companies aren't restricted by. This disadvantages UK companies and restricts their fundraising ability on UK markets.

In contrast, as there is no concept of pre-emption rights in the US, US-listed companies can issue new shares to anyone willing to buy them at a price that is agreeable to the company board without first having to offer them to existing shareholders. US companies can therefore put in place a "shelf registration statement" – effectively a published prospectus that last for five years, and can raise money in the public markets without any delay. This allows offerings for \$100's of millions of dollars overnight. This means that US banks operate processes that work to very rapid timelines that simply couldn't work if a UK company had to first offer shares to existing shareholders.

As a result of the pre-emption rights and other insufficiencies in the UK's public markets, UK-quoted life sciences and biotech companies are increasingly dual-listing on Nasdaq and often delisting from AIM. The US public market is also unanimously seen as the primary destination for IPOs in our sector.

The BIA recommends that UK companies would be able to pass an enduring waiver of pre-emption rights - for 5 years or longer. This would remove the annual expense and drain on human resources for each AGM, and facilitate more efficient and rapid secondary capital raising on UK public markets. This in turn would improve the financing environment for UK life sciences and biotech companies, helping to address the scale-up problem and create better-functioning public markets for UK biotech companies.

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<sup>8</sup> Investment Association (2016), *Share Capital Management Guidelines*: <https://www.theia.org/industry-policy/guidelines/guidelines-investee-companies>

## About the BIA

The BIA is the trade association for innovative life sciences in the UK. Our goal is to secure the UK's position as a global hub and as the best location for innovative research and commercialisation, enabling our world-leading research base to deliver healthcare solutions that can truly make a difference to people's lives. We are full members of the UK Life Science Council and ensure our members participate fully in UK government consultations and partnership working.

We have over 400 members, including:

- Start-ups, biotechnology and innovative life science companies
- Pharmaceutical and technological companies
- Universities, research centres, tech transfer offices, incubators and accelerators
- A wide range of life science service providers: investors, lawyers, IP consultants, IR agencies

We promote an ecosystem that enables innovative life science companies to start and grow successfully and sustainably.

**For any further information on the contents of this submission please contact Dr Martin Turner, Head of Policy and Public Affairs, by emailing [mturner@bioindustry.org](mailto:mturner@bioindustry.org)**