



FCA Consultation Paper 24/12 - Consultation on the New Public Offers and Admissions to Trading Regulations Regime

7 August 2024

The FCA has published its proposed rules for companies seeking to admit securities to a UK regulated market or 'primary' multilateral trading facility (**MTF**) under the new regulatory framework established through the Public Offers and Admissions to Trading Regulations (**POAT Regulations**). Together with the POAT Regulations, the final form rules will, once implemented, replace the UK Prospectus Regulation (see Ashurst update [here](#) for further information).

The public offers and admissions to trading proposals follow the FCA's recent listing regime reforms establishing new UK Listing Rules which seek to enhance the attractiveness of the UK as a global listing venue (see Ashurst update [here](#) for further information). Both reform processes emanate from Lord Hill's UK Listing Review, published in 2021.

Together with CP 24/12, the FCA has also published CP 24/13 on its proposed rules for the new regulated activity of operating a public offer platform which, under the new POAT Regulations framework, can be used to facilitate public offers of above £5 million by issuers of securities that are not being admitted to a public market.

FCA approach

Under the POAT Regulations, the FCA has rule-making responsibilities in relation to admissions to trading on regulated markets. The FCA is proposing to maintain a substantial degree of consistency between the existing and new UK prospectus regimes in respect of the approach to admissions to trading on regulated markets – for example, a prospectus will be required for initial admissions, content requirements will broadly remain as they are and the scope of exemptions to the requirement to produce a prospectus will, in the main, be carried forward. However, the FCA is proposing a number of significant updates. Outlined below are some of the key substantive changes put forward in CP 24/12 that are relevant to equity securities. A separate briefing addressing proposals for non-equity securities will follow.

Further issuances

In line with one of the principal recommendations of the UK Secondary Capital Raising Review (see Ashurst update [here](#) for further information), the FCA is proposing to increase the threshold at which a prospectus is required for further issuances of securities already admitted to trading on a regulated market from 20% of existing share capital to 75%. This represents a clear divergence from recent EU legislative proposals which increase the current 20% threshold to 30%. The FCA's rationale for this change is that, where securities are already admitted to trading, substantial disclosure is already available to the market; as a result, concerns relating to information asymmetries will tend to be much reduced, absent specific circumstances. Consistent with this reasoning, the FCA is considering a supplementary approach for further issuances by companies in financial

difficulty, including a requirement for issuers to notify the FCA even where an issuer seeks to raise less than 75% of its existing share capital. Following the issuer notification, the FCA would have the discretion to require a prospectus to be published.

The FCA is also proposing to continue to permit issuers to publish a voluntary prospectus for FCA approval for issuances below the 75% threshold. This would allow issuers to meet the expectations of US investors in the event an offer of securities is also extended into the US.

Financial information

The FCA is proposing to carry forward most of the historical financial information prospectus disclosure requirements. In response to stakeholder feedback, the FCA is publishing additional guidance in a draft Technical Note for companies with complex financial histories on the financial information that should be included in a prospectus, aiming to alleviate the uncertainty faced by some issuers at the application stage.

Whilst the FCA is proposing to retain the requirement to include a working capital statement in a prospectus, it is seeking feedback on whether issuers should be permitted to disclose significant judgements made in preparing the working capital statement, including assumptions on which the statement is based and the sensitivity analysis which has been performed, in a bid to enhance the utility of the issuer's confirmation to investors. The FCA is also seeking views on whether issuers should be able to base the working capital statement on the underlying due diligence performed in relation to viability and going concern disclosures in annual financial statements, recognising the additional cost and time involved in preparing a working capital statement.

Protected Forward Looking Statements

The UK Listing Review highlighted that, while forward looking information can be particularly useful for investors when making investment decisions, the existing liability regime deters companies from including such information in prospectuses. In response to this, the POAT Regulations created the concept of 'protected forward looking statements' (**PFLS**) which are subject to a revised liability threshold based on recklessness as opposed to negligence. In CP 24/12, the FCA seeks views on whether its proposals provide clarity and sufficient legal certainty as to what constitutes a PFLS and how such a statement can be identified in a prospectus. The proposals are relevant for both regulated market prospectuses and MTF admission prospectuses. Aside from this change, the regime will generally retain the existing negligence-based threshold for liability for false, misleading or omitted information.

Sustainability-related disclosures in prospectuses

Consistent with the FCA's focus on increasing transparency on climate and wider sustainability risks and opportunities, in relation to sustainability-related disclosures in prospectuses, the FCA is proposing to supplement existing minimum content requirements for issuers seeking admission of equity securities to a regulated market to include certain climate-related disclosures where the issuer has identified climate-related risks as risk factors or climate-related opportunities as material to the issuer's prospects. The FCA may look to complement this proposed requirement with further guidance in due course.

MTFs

The POAT Regulations introduced the concept of an 'MTF admission prospectus', seeking to facilitate wider participation in the ownership of public companies by allowing primary MTF issuers, such as AIM issuers, to offer securities to the public without having to produce an FCA-approved prospectus. The FCA proposes that an MTF

admission prospectus will be required for all initial admissions to trading and admissions of enlarged entities resulting from a reverse takeover. The FCA's powers to require the publication of an MTF admission prospectus are, however, limited to primary MTFs that allow retail participation. It is envisaged that exceptions to this requirement will apply where the issuer uses the fast-track route for an admission to trading on the AQSE Growth Market or the AIM Designated Market Route for an admission to trading on AIM.

MTF admission prospectuses will be subject to the same statutory liability and compensation scheme as regulated market prospectuses.

Sourcebook

It is proposed that a new Prospectus Rules: Admission to Trading on a Regulated Market sourcebook (**PRM**) will replace the existing Prospectus Regulation Rules (**PRR**) sourcebook.

Next steps

The FCA has requested that formal responses to the consultation papers be submitted by 18 October 2024.

The FCA has indicated that it will undertake a follow-up consultation later this year in respect of, amongst other things, certain transitional provisions and minor changes to render the applications process for further issuances of securities more efficient.

It is envisaged that the rules for the overall POAT Regulations regime will be finalised by the end of H1 2025, subject to feedback and the approval of the FCA board. The FCA has also signalled that there would be a further period before the new rules take effect.

The information provided is not intended to be a comprehensive review of all developments in the law and practice, or to cover all aspects of those referred to.

Readers should take legal advice before applying it to specific issues or transactions.