

FCA Consultations on prospectus regime

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On 26 July 2024, the Financial Conduct Authority (FCA) published two proposing rules for a new public offers and admission to trading regime, under powers delegated by the Public Offers and Admissions to Trading Regulations 2024 (POATRs). The POATRs established in secondary legislation the regulatory framework for the new regime which, once implemented, will replace the current UK Prospectus Regulation. The POATRs came into force (for limited purposes) on 30 January 2024, including empowering the FCA to make rules and issue guidance in relation to the new regime. However, it will only come into force substantively once the FCA has consulted on and finalised the underlying regulatory framework, expected to be by the end of H1 2025.

Under POATRs, in the context of an admission to trading, the FCA is empowered to make rules that require the publication of a prospectus prior to admission of securities to trading on a UK regulated market or multilateral trading facility that operates as a primary market (Primary MTF), and Consultation Paper 24/12 (CP24/12) sets out the FCAs proposals in this regard.

The second Consultation Paper, CP24/13, which we do not address in detail in this article, sets out the FCA's proposals for the new regulated activity of operating a public offer platform (POP), which can be used to facilitate higher-value public offers by issuers to investors of securities that are not being admitted to a market. Higher-value in this context being public offers above £5m over a 12 month period. This proposal, offers an interesting alternative means of capital raising, which the FCA expects to predominantly appeal to earlier-stage and smaller companies that do not want to be on a regulated market or multilateral trading facility. The final rules for the POP regime are expected at a similar time to the proposed new prospectus regime, however, the FCA has said that it will allow time for firms to prepare before bringing the rules into force.

What are the key proposals set out in Consultation Paper 24/12?

Overall, the FCA is proposing to keep a large degree of consistency between the current UK prospectus regime and the new regime, with various improvements being put forward to reduce cost to issuers, improve access to markets or improve quality of information, whilst retaining the intended outcome of the regulation. However, there are also some more disruptive proposals, such as significantly increasing the threshold at which a prospectus is required for further issuances, and requirements regarding an MTF admission prospectus for Primary MTFs, which will have implications for a broad range of market participants, including those looking at admission to trading on AIM or AQSE. A summary of the key proposals is set out below:

When a prospectus may be required

The FCA has, for the most part, in its proposals maintained the exemptions to the requirement for a prospectus set out in Article 1(5) of the UK Prospectus Regulation. However, the proposals look to amend a number of exemptions, including the threshold for triggering a prospectus for further issuances, which will be increased from 20% of existing fungible securities to 75%. Issuers may still produce a voluntary prospectus approved by the FCA where issuances are below this threshold. The FCA is also seeking views on whether a prospectus should be required for further issuances by companies in financial difficulty (i.e. rescue financing), even where the 75% threshold hasn't been met.

In addition, the FCA proposes to remove some exemptions entirely, including the exemption for non-equity securities issued in a continuous or repeated manner by credit institutions.

Excluded securities

The FCA proposes to retain the existing list of excluded securities that are set out in Article 1(2) of the UK Prospectus Regulation, save for securities issued by non-profit associations, which would be subject to the prospectus requirements.

Content of prospectus summary

- **Financial Information** - Under the FCA's proposals issuers will be permitted to incorporate financial information by reference in the summary, rather than requiring detailed financial information to be replicated.
- **Historical financial information** - The FCA's proposals will retain the existing requirement to include in the summary the 'audited historical financial information covering the latest three financial years (or such shorter period as the issuer has been in operation)' and the audit report in respect of each year for the last 3 years for issuances of equity securities and 2 years for issuers of non-equity securities.
- **Working Capital Statement** - The FCA has stated that it intends to retain the requirement to include a working capital statement in the prospectus. However, it has not included any detailed changes in the current consultation. The FCA is seeking views on the impact of potential changes before putting forward detailed proposals.
- **Pro forma information** – The requirements to provide pro forma information (as set out in Annex 20 of the UK Prospectus Regulation) will be retained.
- **Age of financial information** – The FCA is seeking views on whether to replicate in the new regime the requirements that were previously in the Listing Rules for premium listings, which required information on the balance sheet be no more than six months old by the prospectus date and no more than nine months old by the date the shares are admitted to listing.

For issuers with complex financial histories, the FCA has also produced some draft guidance, which is annexed to the consultation paper.

Sustainability related disclosures in prospectuses

In addition to the existing minimum content requirements for issuers seeking admission of equity securities to a regulated market, certain climate-related disclosures will be required where the issuer has

identified:

- climate-related risks as risk factors; or
- climate-related opportunities as material to the issuer's prospects.

In relation to debt instruments, where issuers have marketed these as 'green', 'social' or 'sustainable' or issued under a bond framework or a similar document, the issuer would be required to disclose that and be required to disclose further information regarding its securities, depending on the type of bond being listed.

These disclosure requirements would not extend to other securities, such as asset backed securities, issuers of general-purpose debt securities, listed investment companies. The FCA considers that sustainability related disclosure requirements for such other securities are best, or already sufficiently, addressed elsewhere.

Protected forward looking statements

The FCA is proposing a framework to give issuers legal certainty as to what information can be deemed protected forward looking statements (PFLS) and to enable investors to identify and assess PFLS.

The proposed framework includes:

- a general definition that will apply to all PFLS disclosures (and which includes a reasonable investor test);
- category-specific criteria (with different criteria applying to financial information and operational information); and
- specific exclusions (with an assumption the mandatory disclosures will not be considered PFLS unless certain exceptions apply).

PFLS must be clearly identified as such in a prospectus.

This approach will also apply to prospectuses for admissions of securities to a Primary MTF.

Six-day rule

The FCA proposes to shorten the period for which a prospectus must be made available to the public prior to securities being admitted to trading from six days to three days, with one of the aims being to increase retail participation in capital raisings.

Admission prospectuses for Primary MTFs

The admission of transferable securities to trading on a Primary MTF (such as AIM) is typically facilitated by an admission document. A prospectus is not currently required unless the rules of the Primary MTF (e.g. the AIM Rules for Companies) require a prospectus or the relevant public offer is not otherwise exempt under the UK Prospectus Regulation.

The FCA is proposing to introduce an MTF admission prospectus, enabling Primary MTF issuers to offer securities to the public without producing an FCA approved prospectus. This would allow issuers to make offers that are not limited to qualified investors or to fewer than 150 people. The FCA is proposing to

require an MTF admission prospectus for all initial admissions to trading and admission of enlarged entities resulting from a reverse takeover, even where no fundraising is sought. An MTF admission prospectus would not be required to be reviewed or approved by the FCA.

The FCA is not able to require production of an MTF admission prospectus where trading on the Primary MTF will be limited to qualified investors (i.e. where retail investors do not participate in the market). In such circumstances, only the relevant market operator can require this by amending the rules of the Primary MTF.

Exceptions for admission prospectuses for Primary MTFs

The FCA proposes that an issuer be exempt from the requirement to produce an MTF admission prospectus where it uses:

- the AIM Designated Market Route for an admission to trading on AIM; or
- the fast-track route for admission to trading on the AQSE Growth Market.

Issuers that use these routes to admission to trading already have securities admitted to trading on qualified markets and are not required to produce an admission document.

Further issuances on Primary MTFs

Primary MTF operators will have discretion in deciding whether or not an MTF admission prospectus is required for further issuances.

What's coming next for UK Listed Companies?

Coupled with the recent changes to the UK listing regime (see [New UK Listing Rules to be implemented 29 July 2024](#)), and other reforms recently proposed by the FCA (including reform to the derivatives trading obligation in Consultation Paper 24/14), the FCA's proposed rules for a new public offers and admission to trading regime are a lot for market participants to get to grips with. However, the proposals are likely to be welcomed by the market. CP24/12 and CP24/13 are open for responses until 18 October 2024, with the FCA looking to finalise rules for the prospectus regime by the end of H1 2025. The final rules for the POP regime are expected at a similar time, with the FCA stating it will allow time for firms to prepare before bringing the rules into force. We will be tracking the progress of the consultations and will keep you updated on these developments as they progress.