

Public offers and admissions to trading: towards a new UK regime

19 September 2024

In a significant milestone in the reform of the UK's capital markets, the Financial Conduct Authority (**FCA**) has published for consultation detailed proposals, including draft rules, for a new UK regime for public offers and admissions to trading. This [consultation paper \(CP24/12\)](#), which coincided with the coming into force of the new UK listing regime, is the latest step towards enhancing the competitiveness of the UK's capital markets and removing barriers to participation.

Background

In March 2022, in response to HM Treasury's Prospectus Regime Review,¹ the previous government committed to repealing and replacing the current EU-derived Prospectus Regulation (**UK Prospectus Regulation**). Since then, key legislation has been put in place, notably:

- the Financial Services and Markets Act 2023 (**FSMA 2023**), which gives the government wide-ranging powers in relation to the repeal and replacement of retained EU financial services law; and
- the Public Offers and Admissions to Trading Regulations 2024 (**POATRs**), which relate more specifically to public offers and admissions.

The POATRs:

- create a general prohibition on public offers of securities, followed by a series of exceptions from this prohibition²;
- establish a new regime for securities admitted to trading on a regulated market (e.g. the Main Market of the London Stock Exchange or multilateral trading facility (**MTF**) (e.g. AIM); and
- create a new regulated activity of operating an electronic system for public offers of certain securities.³

Within this framework, the POATRs delegate the detailed requirements for the new regimes to the FCA, allowing for a more regulator-led approach. This includes giving the FCA more flexibility to decide when a prospectus will be required where securities are admitted to a regulated market and also giving it the power to require the operator of a primary MTF (that is not restricted to sophisticated investors) to include certain provisions in its rules.

This is a significant departure from existing EU-derived legislation with which issuers and practitioners have worked since 2005. The flexibility allowed to the regulator under the POATRs is not, for the time being, mirrored in the EU, with continuing prospectus exemptions imposed by directly applicable EU regulation.

For overseas business, which the London Stock Exchange must continue to attract, it remains to be seen whether this will provide an arbitrage for IPO candidates when faced with a choice of venues across Europe. Certainly, the new UK listing regime goes some way towards this. For overseas issuers, any future steps taken by the FCA, pursuant to its new powers, to unilaterally reinstate an equivalence regime for prospectuses drawn up under the EU Prospectus Regulation will no doubt be welcome.

CP24/12 sets out the FCA's current draft rules for companies seeking to admit securities to a UK regulated market or primary MTF. In developing its proposals, the FCA has consulted extensively with stakeholders. We set out below the key proposals in CP24/12 (except insofar as they relate to debt securities).

Admissions to trading on a regulated market: general approach

The FCA proposes replacing the Prospectus Regulation Rules sourcebook, the primary source of regulation for the existing regime, with a new Prospectus Rules: Admission to Trading on a Regulated Market sourcebook (**PRM sourcebook**). It intends keeping a large degree of consistency between the new and current regimes in its approach to admissions to trading on regulated markets, with a bolder approach for secondary issues.

The PRM sourcebook therefore starts from a presumption that the FCA will continue to require a prospectus for admissions to trading on regulated markets, subject to appropriate exemptions.

These exemptions are, for the most part, consistent with those that currently apply under the UK Prospectus Regulation e.g. securities resulting from the conversion or exchange of other securities, shares issued in substitution for shares of the same class already admitted to trading on the same regulated market, exemptions for scrip dividends and employee offers.

In the case of the existing exemptions applying to takeover offers, mergers and divisions and shares already admitted on another regulated market, the FCA has included them in the draft PRM sourcebook but it is consulting on whether to retain them and, if so, whether they can be made more effective.

Secondary issues

More radically, the FCA proposes to increase the threshold for requiring a prospectus for further issues of securities that are already admitted to trading on a regulated market from 20% (of existing fungible securities) to 75%.

This is on the basis that there are less likely to be concerns about information asymmetry where securities are already admitted to trading, given that existing issuers are already obliged to disclose information under the Disclosure Guidance and Transparency Rules and the UK Market Abuse Regulation. Of course, the increased threshold will be tempered for issuers having regard to the Pre-

Emption Group guidelines which restrict non-pre-emptive issues for cash to a maximum of 20% of issued share capital.

The FCA proposes to allow issuers to publish a voluntary prospectus for approval by the FCA for issues below the new 75% threshold, to enable issuers to demonstrate a level of compliance where they need to do so (e.g. for overseas issues).

Where not exempt, or where issuers wish to produce a voluntary prospectus, the prospectus may be a simplified or full prospectus.

In the case of further issuances by companies in financial difficulty, the FCA is consulting on possible additional notification requirements.

Exempt securities

Under the POATRs, the FCA has discretion as to whether to require a prospectus for the admission to trading of all transferable securities or whether to exempt certain types of security.

It is proposing to carry across the current exemptions (as listed in Article 1(2) of the UK Prospectus Regulation) other than in respect of securities issued by non-profit associations.

Contents of a prospectus

CP24/12 sets out proposed changes to the content requirements for prospectuses which include the following.

- **Prospectus summary:** A reduction in the prescribed contents for the prospectus summary (e.g. in relation to detailed financial information) and an increase in the page limit from seven to 10.
- **Financial information:** While the current financial information requirements, including the requirement for a working capital statement, will broadly be carried forward into the new regime, the FCA:
 - plans to clarify the requirements relating to the auditing of historical annual financial information to require that any material uncertainty relating to going concern, or any other matters reported on by exception, be reproduced in full;
 - is considering further the requirements that should apply in relation to working capital statements, in particular whether it should allow issuers to (i) disclose significant judgments, and (ii) base the working capital statement on the underlying due diligence performed for the purposes of viability and going concern disclosures in annual financial statements;
 - has included new draft guidance for companies with complex financial histories.
- **Sustainability-related disclosures:** Key proposed changes are:
 - a new climate-related disclosure rule, with minimum information requirements set out in the Annexes to the PRM sourcebook, where an issuer of equity securities or depositary receipts has identified climate-related risks as risk factors or climate-related opportunities as material to its prospects;
 - where an issuer has published a climate-related transition plan and where the contents are financially material, a requirement that the issuer includes a summary of key information

- about the plan in a prospectus; and
- an update to Technical Note TN801.2 to cover sustainability-related risks and opportunities other than climate change.

The "six-day" rule

It is proposed that the requirement of the UK Prospectus Regulation for the prospectus in an IPO to be made available to the public at least six working days before the end of the offer be amended to reduce the period to three working days.

Protected forward-looking statements

HM Treasury's Prospectus Regime Review and earlier reviews recommended changing the prospectus liability standard with respect to forward-looking statements to encourage forward-looking disclosure by issuers and help investors make better informed investment decisions.

The POATRs therefore create the concept of "protected forward-looking financial statements" (**PFLS**) and replace negligence-based liability with a higher liability threshold based on fraud or recklessness for such statements.

The POATRs also give the FCA powers to make rules relating to PFLS and CP24/12 sets out how the FCA is proposing to use those powers to provide a clear framework for issuers. Briefly, these include:

- creating two categories of PFLS, financial and operational PFLS;
- setting out criteria that will need to be satisfied for all PFLS (e.g. a reasonable investor test);
- setting out category-specific criteria for each of financial and operational PFLS;
- excluding from the scope of PFLS most mandatory disclosures that are required by the PRM sourcebook (to avoid a more general shift away from negligence-based liability, though profit forecasts will be within the scope of PFLS even where they are mandatory); and
- presentational requirements, including as to the form of statement that must accompany PFLS.

A significant proportion of IPOs entail securities law liability for companies and directors outside the UK. A supportive UK environment to make these statements is only one of a myriad of factors that will continue to be taken into account in assessing the balanced value of making PFLS.

Primary MTFs

Background: A prospectus is not currently required for the admission of securities to trading on a primary MTF (e.g. AIM), unless there is a non-exempt public offer. This results in relatively few primary MTF issuers making non-exempt offers (e.g. to more than 150 persons excluding qualified investors) because any such offer requires the production of an FCA-approved prospectus, which is costly.

To address this barrier to investor participation, the POATRs:

- introduce the concept of an "MTF admission prospectus"; and
- empower the FCA to require the operators of primary MTFs (other than those only for qualified investors) to specify in their rules that the publication of an MTF admission

prospectus/supplementary prospectus is a condition of admission to trading.

The MTF admission prospectus: In CP24/12, the FCA confirms that it proposes to require an MTF admission prospectus for all initial admissions to trading and admissions of enlarged entities resulting from a reverse takeover. This is subject to an exception where the issuer uses the AIM Designated Market Route for an admission to trading on AIM and other market equivalents.

The MTF admission prospectus will be the only type of admission document for all new admissions to trading on primary MTFs that allow retail participation, even when there is no fundraising.

In accordance with the POATRs, the proposed rules on PFLS (see above) will also apply to an MTF admission prospectus. However, beyond that, the relevant MTF operator will set the detailed content requirements and the process for reviewing and approving an MTF admission prospectus, including any supplementary prospectus required in the event of a significant new factor or material misstatement.

Secondary issues: The FCA proposes to allow primary MTF operators to have discretion in deciding whether an MTF admission prospectus will be required for secondary issues, noting that MAR will continue to apply to primary MTF issuers. This should ensure ongoing disclosure of material information to investors ahead of any further issue of securities irrespective of whether the market operator requires a specific disclosure document.

Prospectus liability: An MTF admission prospectus/supplementary prospectus will be subject to the same statutory responsibility and compensation provisions, including withdrawal rights, as apply to regulated market prospectuses.

Advertisements: The FCA proposes to extend the advertisements regime, which currently applies to public offers and to admissions to trading on regulated markets, to the admission of transferable securities to trading on a primary MTF.

Implementation timetable

The consultation remains open until 18 October 2024. The FCA is aiming to finalise the rules for the overall POATRs regime by the end of the first half of 2025, with a further period before the new rules come into force.

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1. "[UK Prospectus Regime Review Outcome: replacement of the UK Prospectus Regulation](#)," Dentons client alert, March 7, 2022↩
 2. These replicate most of the general exemptions from the requirement to produce a prospectus under the UK Prospectus Regulation (e.g. offers to fewer than 150 people), but also reflect the new regime.↩
 3. The FCA is consulting on this separately in its [consultation paper](#) CP24/13 (New regime for public offer platforms). Broadly, these platforms will allow companies to raise capital by offering securities outside a public market to a wide investor base, including retail consumers.↩