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FCA consults on the new prospectus rules

15 August 2024

What matters

Should the CPs result in any concrete reforms, it is likely that we will see an uptick in UK capital markets, particularly in respect of both retail investor participation and accelerated capital growth activities for early-stage or capital hungry companies (notably those operating in the tech and life sciences sectors).

What matters next

Interested stakeholders—including existing and prospective issuers, sponsors and legal and financial advisors—are encouraged to respond to the proposals outlined in each of the CPs online or by email no later than 18 October 2024. It is anticipated that the new rules will be finalised by the end of the first quarter of 2025, subject to consultation responses received and final FCA approval. Prior to the new rules taking effect, there would be a further implementation period.

On 26 July, the UK Financial Conduct Authority (FCA) published two consultation papers, CP24/12 and CP 24/13 (together, the CPs), relating to the new regime for public offers and admissions to trading to replace the existing UK Prospectus Regulation.

These proposals are part of a package of measures designed to strengthen the UK's capital markets; promoting more efficient and effective capital raising for issuers and increasing investor opportunities.

CP 24/12

CP 24/12 sets out proposals for new rules on the new Public Offers and Admissions to Trading Regulations (**POATRs**). The POATRs will replace the existing UK Prospectus Regulation, with both slightly relaxed rules relating to the format and contents of a prospectus summary, and a focus on reforms for securities being admitted to a regulated market or primary Multilateral Trading Facility (**MTF**).

Key recommendations:

1. **MTF Admission Prospectus.** A new type of prospectus, termed an "MTF admission prospectus", is proposed to be required for all initial admissions to trading on a primary MTF. On a primary MTF, trading is not intended to be limited only to qualified investors but will also bring retail investors into the fold. An MTF admission prospectus will be required for all IPOs and reverse takeovers on either AIM or Aquis. Although FCA approval will not be required, an MTF admission prospectus will be

subject to the same statutory responsibility and compensation provisions applicable to a regulated market prospectus. Operators of primary MTFs will have discretion to determine whether an MTF admission prospectus is needed for further issuances, as well as any approval or additional content requirements.

2. **Secondary Issuances on Regulated Markets.** A prospectus will still be required for an IPO. However, on secondary issuances of equity securities already admitted to trading on a regulated market the FCA is seeking to increase the threshold for not requiring a prospectus from the current 20% of existing share capital to 75%, which would be particularly useful for capital hungry companies (for example, tech companies or those in the life sciences sector) by significantly reducing the costs involved in raising further capital below the 75% threshold. It is expected that this exemption will also benefit issuers who may issue consideration shares pursuant to a takeover offer below the 75% threshold. Below this threshold, an issuer will have the flexibility to voluntarily publish an FCA-approved prospectus, recognising the different needs of various issuers including those with a more global shareholder base. For example, a voluntary prospectus may be used for regulated market issuances that do not meet the requirements for a mandatory prospectus, but still carrying the same rights and obligations of a mandatory regulated market prospectus.
3. **Contents of a Prospectus Summary:** In terms of the summary document required by the current UK Prospectus Regulation, the FCA proposes to adopt a less prescriptive approach to the contents of the summary and to remove the requirements for detailed financial information and allow issuers to opt for cross referencing and incorporation by reference instead. The FCA has recommended that the mandatory page limit for the summary be increased from seven to ten pages.
4. **Working Capital Statement.** On the requirements for inclusion of a working capital statement in a prospectus, the FCA is considering whether to allow issuers to incorporate the assumptions on which any such statements are based, or whether to allow the working capital statement to be derived from underlying due diligence undertaken for the purposes of viability and going concern disclosures in an issuer's annual financial statements.
5. **Sustainability-linked Disclosures.** For sustainability-linked disclosures, the FCA is proposing to supplement existing minimum content requirements for issuers seeking admission of equity securities (or depository receipts representing shares) 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. Such disclosures will be aligned with disclosures mandated by the TCFD Recommendations and ISSB Standards.
6. **Protected forward-looking statements.** Forward-looking statements in a prospectus that meet specified criteria and labelling requirements will also be subject to a higher threshold for statutory liability ("protected forward-looking statements" or "PFLSs"). This means that the current standard of negligence that applies to a regulated market prospectus will shift to the higher dishonesty/recklessness standard in order to encourage issuers to include more forward-looking data which investors find very useful. Fundamentally, the introduction of PFLSs will encourage more disclosure of forward-looking information and safeguard investor protection by ensuring they can identify and assess such content.
7. **"Six-Day Rule".** The FCA has also proposed a reduction from the current "six-day rule", under which a public offer prospectus must be made available to the public for at least six working days before the offer can be closed, to three working days. The FCA notes that the current six-day rule can encourage issuers to avoid involving retail investors (i.e. because an offer to institutional

investors only can be closed as soon as demand is met and having to keep an offer open longer than necessary exposes the issuer to greater risk of the offer failing if markets change). The FCA, markedly, does “not consider that retail investors need six days to obtain and review a prospectus, given that prospectuses are available online, and often retail investors will not read the detailed and technical information with a prospectus”.

CP 24/13

In parallel with CP 24/12, the FCA is also consulting on proposals for a new activity of operating a public offer platform (**POP**), which will offer issuers an alternative route to raise capital outside of public markets, including from retail investors. It is expected that *“the introduction of such platforms should promote scale-up capital raising for smaller issuers while ensuring that issuers get the right disclosures on the key terms and risks of an investment.”*

The FCA is proposing to insert a new chapter 23 into its Conduct of Business Sourcebook on the assumption that a POP will most likely be used by venture capital-type and smaller companies that are more likely to be perceived as high risk, in part due to their limited track record with which investors can assess the risk return profile of the potential investment.

Proposals under CP 24/13 are predicated on measures aimed at promoting an easier and more efficient capital allocation process, whilst ensuring that investors receive sufficient information on the associated risks. By easing access to capital, the FCA expects that issuers will find it *“easier and more attractive to raise capital so as to fund their business expansion. In the long term, this productive capital is expected to fuel economic growth and prosperity of the wider UK economy.”*

Key points:

1. A POP operator will have to conduct due diligence on an issuer, and obtain certain independent information on it, by means of a reasonable verification exercise as part of investor protection.
2. Issuers would need to make additional disclosures to a POP operator spanning their business model, risk factors, financials, rights attaching to the securities, proposed use of funds, target amount and tax reliefs available for investors—all of which will be independently verified by a POP. Non-factual information will undergo a “plausibility assessment” under which a POP operator would be required to assess the plausibility of the relevant information in the light of the circumstances of the issuer and the public offer.
3. Investors on the POP will then be provided with a summary in a prescribed format, together with certain information on the issuer and the offer, in addition to the additional verification checks undertaken by the relevant POP operator.

Timings and next steps

The proposals in each of the CPs dovetail with the FCA’s most recent Listing Rules reform effected on 29 July 2024. They form part of the FCA’s wider strategy to continue to develop the UK’s capital markets, attracting and retaining investors, and supporting international growth and competitiveness—whilst maintaining adequate investor protection mechanisms.

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