

UK PROSPECTUS REGIME REFORMS APPROACH NEXT MILESTONE

FINAL PUBLIC OFFERS AND ADMISSIONS TO TRADING REGULATIONS PUBLISHED

The final draft [Public Offers and Admissions to Trading Regulations 2023](#) (the “**Regulations**”), first announced as part of the Edinburgh Reforms last year, have been published and laid before Parliament together with an [explanatory memorandum](#). The Regulations will lay the foundations for the new UK Prospectus Regime, creating a new framework for the offering of securities to the public and the admission of securities to trading in the UK.

The Regulations form part of HM Treasury’s programme to deliver the Smarter Regulatory Framework for financial services. The Regulations create a new legal framework for the UK Prospectus Regime and will separate the regulation of admission of securities to trading on a UK regulated market from the regulation of public offers of securities. The Regulations only form the first part of the new UK Prospectus Regime, with much of the detail expected to be set out in new FCA rules. The FCA plans to consult on these rules during the summer of 2024, with the new UK Prospectus Regime expected to take effect in 2025 at the earliest.

Background

In March 2022, the UK Government published its [Prospectus Regime Review Outcome](#), taking forward the recommendations of the Hill Review to reform the UK Prospectus Regime, with the aim of making regulation in this area more agile and effective and delegating a greater degree of responsibility for the regime to the UK Financial Conduct Authority (the “**FCA**”) (see our [briefing](#) for further details).

An [illustrative version](#) of the Regulations was published in December 2022 as part of the so-called “Edinburgh Reforms” and a [subsequent version](#) was published in July 2023 to coincide with the Chancellor’s Mansion House speech. The final version has now been published in substantially the same form as the July version, with a few minor changes made.

What will the Regulations do?

The Regulations will make a number of substantive changes to the existing UK Prospectus Regime (which is derived from the EU Prospectus Regulation). We highlight below some key points for capital markets practitioners.

Designated activities regime

The Financial Services and Markets Act 2023, which received Royal Assent in June 2023, establishes a framework to revoke financial services legislation that the UK inherited from the EU. Among other things, it introduces the new designated activities regime (the “**DAR**”) which was proposed as part of the Future Regulatory Framework review in 2021. The Regulations exercise powers under the DAR to create new designated activities of:

- offering relevant securities to the public in the UK;
- admitting or requesting admission of transferable securities to a UK regulated market; and
- admitting or requesting admission of transferable securities to a primary MTF. A primary MTF broadly means one with rules specifying which companies are eligible for admission and the disclosure and other obligations they must comply with on a continuing basis. AIM is expected to be a primary MTF.

Advertisements/related communications in relation to offers/admissions are also designated activities.

The Regulations, when made, will give the FCA new powers to make rules in relation to each designated activity, with the Regulations specifying that the FCA must “have regard” to the desirability of facilitating offers of transferable securities in the United Kingdom being made to a wide range of investors.

Earlier this year, the FCA [published](#) several engagement papers setting out its early thinking in how it will exercise its powers and make rules (see our [briefing](#) for further details). The FCA intends to embark on a formal consultation in the summer of 2024 following feedback received as part of the engagement process.

A new public offers architecture

Under the current regime, it is unlawful to make an offer to the public in the UK without publishing a prospectus unless an exemption applies. Under the new regime, the Regulations will make it unlawful for a person to offer relevant securities to the public in the UK unless an exemption applies.

“Relevant securities” includes non-transferable securities such as minibonds: this delivers on a recommendation of the Gloster Review. A previous draft of the Regulations caused some concern among market participants for inadvertently catching a much wider pool of securities; but the draft was revised to clarify that most are out of scope.

Most of the exemptions to the public offer prohibition under the current UK prospectus regime will be retained. For example, (i) an offer of relevant securities addressed solely to qualified investors; (ii) an offer addressed to fewer than 150 persons in the UK (other than qualified investors); (iii) an offer to directors or employees; (iv) an offer of relevant securities whose denomination per unit amounts to at least £50,000 (or an equivalent amount); or (v) an offer of relevant securities addressed to investors who acquire securities for a total consideration of at least £100,000 (or an equivalent amount) per investor, for each separate offer. The existing exemption for offers made in connection with a takeover will be broadened.

For debt capital markets participants, it is worth noting the change to the “wholesale” denomination threshold from €100,000 (under the current regime) to £50,000 in (iv) which will allow for €100,000 denominated securities under the EU Prospectus Regulation to be offered into the UK on a cross border, exempt public offer basis.

New exemptions include:

- offers conditional on the admission of transferable securities to trading on a regulated market or primary MTF or where transferable securities being offered are at the time of the offer already admitted to trading on a regulated market or primary MTF;
- offers to existing shareholders; and
- offers made by means of a “regulated platform” (see below).

Note, though, that where the securities offered are admitted / will be admitted to a regulated market, the offeror will need to comply with relevant rules made by the FCA or, where the securities are admitted / to be admitted to a primary MTF, with relevant rules made by the operator of the primary MTF (see below).

Admission to trading on a regulated market

Under the current regime, the detailed prospectus requirements for securities admitted to trading on a regulated market are set out in the UK Prospectus Regulation and related legislation. Under the new regime, a prospectus may be required when securities are admitting to trading on a regulated market, and the FCA is empowered by the Regulations to set out rules in this area: for example, as to when a prospectus or other disclosure document should be required (including on a secondary issue), what it should contain, how long it can be valid for and how it should be published. The FCA sought initial views on some of these issues in Engagement Papers nos. 1 and 2; and in Engagement Paper no. 4 it sought views on how to make the MTN programme regime

more efficient and how to facilitate broader access to listed bonds.

Primary MTFs

The FCA also has rule-making powers in relation to securities admitted to trading on a primary MTF. These powers will broadly allow the FCA to require an ‘MTF admission prospectus’ to be published where transferable securities are admitted to trading on a primary MTF that is open to retail investors. An MTF admission prospectus will carry certain protections for both investors and issuers that are equivalent to those that attach to a prospectus. In Engagement Paper no. 6, the FCA indicated it intends to require an MTF admission prospectus to be published for all initial admissions to primary MTFs (including, potentially, reverse takeovers) even when there is no public offer; but primary MTF operators will be given discretion to decide whether an MTF admission prospectus should be required for a further issue of securities; and they would set the specific content requirements for MTF admission prospectuses and the process for reviewing and approving them.

The necessary information test

As well as having to include certain specific items of information, a prospectus must also include “*the necessary information which is material to an investor for making an informed assessment of (a) the assets and liabilities, profits and losses, financial position and prospects of the issuer and of any guarantor, (b) the rights attaching to the transferable securities, and (c) the reasons for the issuance and its impact on the issuer.*” This is known as the ‘necessary information’ test. The Regulations will make some notable changes to this test.

For debt capital markets participants, one welcome change will be making clear that, for debt securities, “prospects” should be read as a reference to the “creditworthiness of the issuer and any guarantor.” The test will also no longer take into account whether the securities are “wholesale” or not in determining what is necessary information.

Protected forward-looking statements

The Hill Review identified ‘forward-looking information’ (for example, projections, estimates, opinions about future events or circumstances, and statements of intention) as particularly useful information for investors to have at their disposal when making investment decisions, and that the current liability regime deters companies from including such information in prospectuses.

The Regulations aim to remove this deterrent by establishing a different liability threshold (based on fraud or recklessness) for certain categories of forward-looking statements (Protected Forward-Looking Statements) in prospectuses or MTF admission prospectuses, with the FCA responsible for specifying the categories of forward-looking information in scope. In Engagement Paper no. 3 the FCA sought initial views on which types of forward-

looking statements should qualify for protection and how they should be identified and presented.

For all other types of information, the existing negligence-based threshold for false or misleading information and omissions will continue to apply.

It is hoped that the change will encourage issuers to include more prospective forward-looking information, principally in IPO prospectuses. In DCM, it may well encourage issuers of debt securities to include more targets and projections (for example, in the context of sustainability disclosure).

Public offer platforms

Under the new regime, any offers of relevant securities where the total consideration exceeds £5 million and that do not qualify for another exemption will need to be made through a public offer platform - i.e. a crowdfunding platform operated by an authorised person that meets certain standards. The FCA sought initial views on what these standards should look like in its [Engagement Paper no. 5](#).

Regulatory deference

There are some aspects of the Prospectus Regime Review Outcome that have not yet been taken forward, such as the Government's intention to develop a regime of regulatory deference for offers into the UK of securities listed on certain designated overseas stock markets. This was intended to permit offerings to be extended into the UK on the basis of offering documents prepared under the

rules of the relevant overseas jurisdiction and market without FCA review or approval. It may be that this is a secondary priority for the Government to be considered at a later stage.

Timing and next steps

The Regulations will now be laid before Parliament for approval. However, even when the Regulations have been approved, most of the substantive provisions will not come into effect until the FCA has formally consulted on and published its detailed rules. FCA consultation is expected in the summer of 2024 with the new UK Prospectus Regime expected to be in place in 2025 at the earliest.

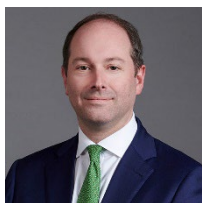
Comment

Once the Regulations and new FCA rules are in effect, the architecture of the UK Prospectus Regime will look very different to its EU equivalent. This will complicate offers that are made into both the UK and the EU.

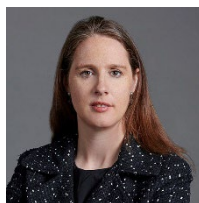
For transactions where securities are admitted to trading on a regulated market, much will depend on the detail set out in the FCA rules. However, early indications from the FCA's engagement process suggest that targeted improvements to the regime are likely rather than wholesale changes. Whatever form the new regime takes, it will be important to ensure that it is appropriately calibrated to allow smooth and efficient cross-border bond issuance in the UK and the EU.



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