

IMPROVING ACCESS TO EU CAPITAL MARKETS: CHANGES TO THE EU PROSPECTUS AND MARKET ABUSE REGIMES

Following the recent publication in the EU Official Journal of a package of legislation known collectively as the EU Listing Act, we now have a clearer picture of how and when the EU prospectus regime, market abuse regime and certain other EU capital markets rules will be amended. This briefing looks at how the changes will impact equity issuers, particularly those that have a primary or secondary listing of securities on an EU market or that may be considering raising capital in an EU market. It also looks at how UK rules are likely to develop in parallel with EU legislation or diverge away from it.

(For details of how the changes will impact debt issuers see our separate [briefing](#).)

Amending legislation

The EU Listing Act is part of the Capital Markets Union 2020 Action Plan. It is aimed at making the EU public capital markets more attractive for EU companies and at encouraging companies of all sizes to list on European stock exchanges. The package comprises:

- A [Regulation](#) to amend the EU Prospectus Regulation, the EU Market Abuse Regulation and EU Markets in Financial Instruments Regulation (MiFIR);
- A [Directive](#) on multiple-vote share structures in companies that seek to list their shares on an EU multilateral trading facility (MTF); and
- A [Directive](#) to amend the MiFID II Directive and repeal the 2001 Listing Directive (also known as the Consolidated Admissions and Reporting Directive, or CARD).

Overall effect

Overall, the proposed changes represent targeted refinements, rather than substantive changes. Many of them are a response to challenges that all capital markets in Europe are facing.

Key changes

- For the purposes of EU MAR, the requirement to announce inside information as soon as possible will not apply where the inside information relates to an intermediate step in a protracted process. Instead, an issuer will have to announce such information only when the process is completed.
- Also for the purposes of EU MAR, it will be made clear that most of the protocols around market soundings - such as the need to obtain the recipient's consent, inform them that they must keep the information confidential and not use it to deal, and to keep appropriate records - are conditions that must be met for the safe harbour to apply; but it is not mandatory for every market sounding to comply with them.
- All EU MTFs will be required to admit to listing companies that have a multiple-vote share structure (also known as a dual class share structure).
- On EU markets, the minimum percentage of shares that must be in public hands from admission (free float requirement) will be reduced from 25% to 10%.
- Various alleviations will be made to the rules around EU prospectuses, including when a prospectus is required and what information it must include. A path has also been laid down for the EU to recognise a prospectus approved in the UK, US or another third country as equivalent to an EU prospectus.

In the UK, the Government and the FCA are responding to these challenges principally by introducing reforms to the [listing regime](#), [prospectus regime](#) and rules around [secondary fundraisings](#); reforms to the market abuse regime may also be brought forward, although probably not for a couple of years. Although in some areas the proposed changes to EU rules will bring them into line with current or planned UK rules, in other areas greater divergence between the EU and UK regimes will inevitably result.

Next steps and timing

The changes will be implemented on a staggered basis:

EU MAR and Prospectus Regulation

- **4 December 2024** (20 days after the relevant amending Regulation was published in the OJ): most of the amendments to EU MAR and the EU Prospectus Regulation will take effect.
- **5 March 2026** (15 months later): a few amendments to the EU Prospectus Regulation will take effect.
- **5 June 2026** (18 months later): amendments to the rules on inside information in EU MAR and the remaining amendments to the EU Prospectus Regulation will take effect.

Where an amendment takes effect after 4 December 2024, this is highlighted in the summary below.

Multiple-vote share structures

- **5 December 2026**: deadline for Member States to implement the Directive in their national law.

MiFID II rules on investment research

- **5 June 2026**: deadline for Member States to implement the amendments.

CARD

- **5 December 2026**: CARD will be repealed.

EU Market Abuse Regulation

When inside information arises

The definition of inside information will remain unchanged, but the requirement in article 17 EU MAR to announce inside information as soon as possible will not apply where the inside information relates to an intermediate step in a protracted process. In such circumstances, an issuer will be required to make an announcement only when the final step in the process is taken.

As a result, where there are intermediate steps in a protracted process that is designed to result in a development that would move the share price (such as a large project or transaction), if any intermediate step in the process is “precise” the issuer will have inside information from that point, and would therefore need to create an insider list, prohibit dealings by insiders and take the other usual precautions around inside information. But it will not need to announce the information until the final step in the process is taken - such as when definitive transaction documents are signed or the board gives final approval. Before the final step is taken, the issuer will not be “delaying” making an announcement, so it will not need to satisfy the conditions for delaying disclosure.

This change will not take effect until **5 June 2026** (18 months after the amending Regulation comes into force).

Comment

This change will be helpful to issuers that are subject to EU MAR. However, if an issuer is also subject to UK MAR, and wishes to avoid announcing information about an intermediate step in a process, it will need to get comfortable that the information is not yet sufficiently precise or, if it is, that it can satisfy the conditions for delaying disclosure.

As noted above, we do not expect reforms to UK MAR to be proposed for some time. But when such reforms are eventually considered, the Government and FCA are likely to assess carefully whether to introduce changes that mirror those being made to EU MAR.

Circumstances in which an issuer can delay disclosure of inside information

The current rule in EU MAR that an announcement of inside information can be delayed if, among other things, the delay is not likely to mislead the public (the meaning of which is amplified in the ESMA Guidelines on delaying disclosure) will be replaced with a condition that the inside information does not contradict the most recent previous public announcement by the company on the matter to which the inside information relates.

A new Regulatory Technical Standard will set out a non-exhaustive list of:

- final events in a protracted process and, for each event, the moment when it is deemed to have completed and an announcement must be made; and
- circumstances when inside information contradicts the latest public statement by the issuer on that matter.

The ESMA Guidelines will continue to set out circumstances when an issuer may have a legitimate interest in delaying disclosure, but they will no longer specify circumstances when delaying disclosure would mislead the public.

These changes also will not take effect until **5 June 2026** (18 months after the amending Regulation comes into force).

Comment

These changes are unlikely in themselves to significantly affect market practice among issuers that are subject to EU MAR. However, it is possible that, when the ESMA Guidelines are updated, ESMA may suggest some changes to the circumstances when an issuer may conclude that early disclosure would prejudice its legitimate interests. In any event, companies that are subject to EU MAR will in due course need to update their policies and procedures around inside information to reflect the changes.

PDMR dealings

The list of exceptional circumstances when a PDMR can deal during a closed period will be expanded. In particular, a PDMR will be able to deal during a closed period where the dealing:

- does not involve any active investment decision by the PDMR;
- results exclusively from external factors or actions of third parties; or
- is a dealing based on pre-determined terms.

In addition, the threshold above which dealings by PDMRs and persons closely associated with them (PCAs) must be notified will be raised from €5,000 to €20,000 within a calendar year. National regulators will be permitted to raise the threshold to €50,000 or decrease it to €10,000 if justified by specific circumstances.

Comment

In practice, UK-listed companies usually try to ensure that PDMRs do not deal at all during closed periods. Nevertheless, it will be helpful for EU MAR expressly to recognise that some “passive” dealings can be carried out during a closed period (a position that is commonly accepted in the UK).

In relation to the de minimis threshold, in the UK this is generally ignored and instead all dealings by PDMRs and their PCAs are notified - partly due to difficulties with calculating when the threshold has been reached. Similar amendments are therefore unlikely to be made to UK MAR.

Market soundings

Article 11 of EU MAR imposes various rules around market soundings. Broadly speaking, where a company or broker acting on its behalf wishes to disclose inside information selectively to an investor for the purpose of gauging their potential interest in a transaction, it must follow certain protocols designed to ensure that the information is properly safeguarded and not misused. If the protocols are followed, the person will be treated as having disclosed the information in the proper course of their employment, profession or duties and will therefore not commit market abuse by reason of having disclosed the information improperly (i.e. they will qualify for a safe harbour).

There has been debate as to whether all or any of the protocols must be followed for every market sounding (i.e. whether they are mandatory), or whether they are simply conditions that must be satisfied in order for the safe harbour to apply. To resolve this debate, EU MAR will be amended to make clear that:

- Most of the protocols specified in article 11 of EU MAR - including the requirements to obtain the recipient’s consent, inform them that they must keep the information confidential and not use it to deal, and to keep appropriate records - are conditions that must be met for the safe harbour to apply; but that it is not mandatory for every market sounding to comply with them.
- The safe harbour is available even if the issuer does not ultimately announce the inside information that was selectively disclosed.

Comment

The first change, in particular, will be helpful. Out of caution, banks tend to assume that all the market sounding protocols are mandatory: this can necessitate careful analysis as to whether a proposed interaction with a key shareholder or other party falls within the definition of “market sounding”. Making clear that most of the protocols are not mandatory should therefore remove some of the current friction around such interactions.

Safe harbour for buyback programmes

At present, where a company that is subject to EU MAR conducts a buyback programme, both the company and any bank(s) acting on its behalf will qualify for a safe harbour from certain types of market abuse if the programme satisfies certain conditions. These include requirements to report to regulators and announce to the market specified details of each purchase made under the programme. Some of these reporting and announcement requirements will be simplified.

Comment

This change will reduce the compliance burden for companies and banks and also the risk of a buyback programme not qualifying for the safe harbour due to an inadvertent failure to report all the relevant information.

Proposed Directive on multiple voting rights

Companies with a DCSS to be permitted to list on an EU MTF

Multiple-vote share structures, or dual class share structures (DCSS) as they are more commonly known, are popular with founders of tech and other high growth companies as a way for them to retain control over certain key matters post-IPO without needing to own a blocking minority of the ordinary shares. Essentially the founder is given a separate class of (usually unlisted) shares that carry multiple votes on matters to be decided in general meeting (high vote shares).

In the EU, DCSS are currently exclusively regulated at national level, leaving Member States free to decide what types of structures to permit. For example, they are broadly permitted in Nordic countries and the Netherlands, but prohibited in Germany, Austria and Belgium. The proposed Directive seeks to achieve greater harmonisation among EU Member States - and thus deter companies from “forum shopping” for an IPO venue that permits their desired form of DCSS - by requiring all Member States to ensure that a company seeking to list its shares on an EU MTF for the first time (i.e. doing an IPO) is permitted to adopt a DCSS. (A SME growth market is a type of EU MTF.) Ordinary shares will not have to be given enhanced economic rights as a quid pro quo.

Mandatory safeguards

To provide safeguards for other investors, Member States will have to, among other things, limit the impact of the high vote shares by either (i) stipulating a maximum voting ratio (of the number of votes that attach to a high vote share compared to the number of votes that attach to an ordinary share) or (ii) requiring shareholder resolutions, other than those relating to the appointment or removal of a director or to approve an operational decision to be taken by the board, also to be approved by (broadly) a majority of ordinary shareholders.

Possible additional safeguards

Member States will continue to be able to put additional safeguards in place, such as rules on who can hold the high vote shares and when their enhanced voting rights should come to an end (a sunset provision).

Disclosure

Member States will have to ensure that any DCSS (i) is appropriately disclosed in the company’s IPO prospectus or admission document and in its annual report; and (ii) is flagged by investment firms and market operators operating an MTF, in accordance with Regulatory Technical Standards that will be adopted by the European Commission.

Comment

The US has relatively permissive rules around DCSS, and a number of high-profile companies with a DCSS have listed in the US over the last few years. In the UK, the rules around companies listing on the Main Market with a DCSS have gradually become more relaxed. Since 29 July 2024, when wide-ranging changes to the listing regime came into force, a company has been able to list in the new Equity Shares in Commercial Companies category (which replaced the premium segment) with almost any typical type of DCSS structure: see our [briefing](#) for further details.

In the EU, the changes are designed to help attract companies - particularly those led by founders - to list on more junior markets in the EU. As a result, a company looking to list in the EU with a DCSS will have a wider range of markets to choose from, which will increase competition for listings both within the EU and between the EU, the UK and the US.

Repeal of CARD and amendments to the MiFID II Directive

Minimum free float

CARD will be repealed and most of its provisions will not be replaced. However, the CARD requirement for a minimum percentage of shares to be in public hands from admission (free float requirement) will be retained, but with the percentage reduced from 25% to 10%. In addition, it will become easier to satisfy this requirement because eligible investors will count as “the public” wherever in the world they are located - whereas at present they count only if they are located in the EU or EEA. Member States will also be permitted to use other methods of assessing whether there will be a sufficient number of shares to support liquidity.

Investment research

Broadly speaking, the investment research rules in MiFID will be amended to allow the re-bundling of payments for research and execution of orders.

Comment

In the UK, the minimum free float percentage for the standard and premium segments was reduced from 25% to 10% in December 2021. In relation to investment research, following a recommendation of the Investment Research Review, the FCA reintroduced a bundled payment option in August 2024. It is also consulting on how the rules relating to payment optionality should apply to UCITS managers and alternative investment fund managers (AIFMs). Broadly speaking both changes will therefore bring EU rules into line with the UK.

EU Prospectus Regulation

Various changes will be made to the EU prospectus regime to allow companies greater scope to raise new funding without having to publish a prospectus and, where a prospectus is required, to make one easier and cheaper to produce. Some of the key changes are highlighted below.

Exemption from the requirement to publish a prospectus in connection with a secondary issue

At present, no prospectus is required in connection with admission to trading where the new shares represent less than 20% of the shares already admitted (taking into account any shares that were admitted over the previous 12 months). However, a prospectus may be required in any event if the new shares are offered to the public in an EU Member State.

With effect from **4 December 2024**:

- **Secondary issue by company listed for at least 18 months (new exemption):** No prospectus will be required for a secondary issue of any size provided (i) the company has had securities admitted to trading on an EU regulated market or an SME growth market for at least 18 months; (ii) the new securities are of the same class as the existing securities; and (iii) the new securities are not issued in connection with a takeover.
- **Secondary issue by listed company of less than 30% of existing capital (threshold raised from 20%):** No prospectus will be required for a secondary issue by a company with securities admitted to trading on a regulated market or an SME growth market where the new securities (i) are of the same class as the existing ones and (ii) represent less than 30% of the existing listed securities (taking into account any securities that were admitted over the previous 12 months). The related exemption for convertibles - i.e. where shares are admitted to trading on a regulated market as a result of the exercise of conversion or exchange rights - will be similarly amended.

In each case, the company will have to publish a short-form document of no more than 11 pages containing key information for investors; but this will not have to be approved by a competent authority. Each of these exemptions will apply to both public offers and admissions to trading.

Comment

These changes will make it easier for EU listed companies to do larger fundraisings, including pre-emptive offers, and to use their own shares as acquisition currency, without needing to publish an EU prospectus.

In the UK, the Secondary Capital-Raising Review recommended raising the threshold at which a prospectus is required on a secondary issue, but it suggested the threshold should be raised to 75%. In the FCA's recent [consultation](#) on changes to the prospectus regime, it proposed to raise the threshold to 75%; although it is considering whether to require a prospectus below this threshold where the issuer is in financial difficulty. Below the 75% threshold, an issuer would continue to be allowed to publish a voluntary prospectus approved by the FCA (either in "full" or "simplified" format) but, where no prospectus is published, it is not yet clear whether the FCA will provide rules or guidance on the type of offer document or announcement the issuer needs to publish.

Exemption for smaller offers to the public

Member States are permitted to exempt domestic offers of securities to the public from the requirement to publish a prospectus where the total consideration to be paid for the securities is less than a specified amount (calculated over a 12-month period). Currently, such amount must be no more than EUR 8 million. This maximum will be increased to EUR 12 million, although Member States will continue to be able to specify a lower threshold.

This change will not take effect until **5 June 2026** (18 months after the amending Regulation comes into force).

Comment

In the UK, the threshold is currently set at EUR 8 million. Under the new regime for public offers and admissions to trading, no prospectus will be required for any offer to the public; but a non-exempt offer above GBP 5 million will have to be made by means of a “Public Offer Platform” (which will be broadly similar to a crowdfunding platform). See our [briefing](#) for further details.

Standardising prospectuses

The format and sequence of information in a prospectus will become more standardised, with the European Commission empowered to adopt Delegated Acts covering certain matters of detail. An equity prospectus will as a general rule have to be no more than 300 sides of A4-sized paper in length. But certain information will not count towards this limit, including the summary, any information incorporated by reference and any additional information that is included because the issuer has a complex financial history or has made a significant financial commitment.

These changes also will not take effect until **5 June 2026** (18 months after the amending Regulation comes into force). Between now and then, ESMA is tasked with developing Implementing Technical Standards to specify “the template and layout of prospectuses, including the font size, and style requirements, depending on the type of prospectus and the type of investors targeted.” ESMA is also expected to develop guidelines on comprehensibility and on the use of plain language in prospectuses to ensure that the information provided is concise, clear and user-friendly. In October 2024, ESMA published a consultation paper on the content and format of prospectuses, which included proposed changes to Commission Delegated Regulation (EU) 2019/980 on the format, content, scrutiny and approval of a prospectus. Further consultations are expected to follow on other aspects of the regime.

Simplified prospectus for secondary issues

The simplified disclosure regime for secondary fundraisings by certain issuers will be replaced with a new EU Follow-On Prospectus. This will have to be drawn up in a standardised format and sequence, include certain minimum items of information and be no more than 50 pages of A4 in length. As with an ordinary prospectus, certain types of information will not count towards this limit.

This change will not take effect until **5 March 2026** (15 months after the amending Regulation comes into force).

EU Growth issuance prospectus

At present, SMEs and smaller companies with securities listed on an SME growth market that wish to raise funding by offering shares to the public can produce an “EU growth prospectus” that includes less information than a full prospectus. However, as the Commission believes the current requirements are still deterring SMEs from raising equity funding, it intends to reduce the amount of information that must be disclosed and broaden the categories of company that are eligible.

This change will also not take effect until **5 March 2026** (15 months after the amending Regulation comes into force).

Comment

In the UK, the FCA is not at this stage proposing to make any equivalent changes to the format or contents of a prospectus or to introduce a maximum length.

Withdrawal rights

At present, where a prospectus relates to an offer of securities to the public, and the discovery of a significant new factor, material mistake or material inaccuracy necessitates the publication of a supplementary prospectus, investors who have already agreed to purchase or subscribe for the securities have a right to withdraw their acceptance. This right must be exercised within two working days (although an issuer can allow a longer period). Similarly, where the final offer price and/or number of securities offered is not included in a prospectus, when this information is finally published investors have a right to withdraw their acceptance. Under the changes, in each case investors will be given three working days to withdraw their acceptance.

Six day rule on retail IPOs

Under current rules, where an IPO involves an offer to the public, the prospectus must be made available to the public at least six working days before the end of the offer. Effectively this means the offer must be kept open for at least six working days - a requirement that can deter companies from including a retail offer in their IPO. Under the changes, the minimum period for which the prospectus must be available in such circumstances will be reduced to three days.

Comment

In the UK, the Secondary Capital Raising Review (SCRR) similarly recommended shortening the period to three days. In the FCA's recent consultation on amendments to the prospectus regime, it proposed to introduce this change.

Prospectus equivalence

Under the amended EU Prospectus Regulation, a third country issuer will be permitted to offer securities to the public in the EU or seek admission to trading of securities on an EU regulated market where it has published a prospectus in accordance with the national laws of the third country (such as the UK or US) provided that, among other things:

- the prospectus has been approved by the supervisory authority of the third country;
- the European Commission has adopted an Implementing Act determining that (broadly) the legal and supervisory framework of the third country imposes equivalent prospectus requirements; and
- the competent authority of the home Member State or, where relevant, ESMA has concluded co-operation arrangements with the relevant supervisory authorities of the third country concerning the exchange of information and the enforcement of obligations.

Comment

Currently, there is no functioning mechanism for an EU competent authority to recognise a UK prospectus as equivalent, or vice versa. This change may therefore help create such a mechanism, although further steps will need to be taken before it could become operational.

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